

2011 (24) S.T.R. 618 (Tri. - Mumbai)

IN THE CESTAT, WEST ZONAL BENCH, MUMBAI

Shri Ashok Jindal, Member (J)

AMALNER COOPERATIVE BANK LTD.

Versus

COMMISSIONER OF C. EX., NASHIK

Final Order No. A/316/2011-WZB/C-IV(SMB), dated 6-7-2011 in Appeal No. ST/14/2010

CASE CITED

Needwise Advertising Pvt. Limited v. Commissioner — 2011 (21) S.T.R. 229
(Tribunal) — *Relied on*.....

REPRESENTED BY : Shri V.M. Doiphode, Advocate, for the Appellant.

Shri Sanjay Kalra, JDR, for the Respondent.

[Order]. - The appellants have filed this appeal against the impugned order confirming the service tax demand of Rs. 3,24,493/- along with interest under Section 75 of the Finance Act, 1994 and various penalties under Sections 77 and 78 of the Finance Act, 1994.

2. The brief facts of the case are that the appellant are providing banking and other financial services and were registered with the department and paying service tax on their taxable services. On 19-9-2005, the appellant surrendered their service tax registration on the ground that the appellant are entitled for the benefit of Notification 6/2005, dated 1-3-2005 as their taxable services are below Rs. 4 lakhs. Thereafter, in January 2008 a survey was conducted at the premises of the appellant wherein it was found that the appellant had wrongly availed the benefit of Notification 6/2005 and claimed exemption thereunder. Therefore, it was found that appellants are liable to pay service tax for the entire period. A show-cause notice dated 30-4-2008 was issued for demand of service tax of the period 10-9-2004 to 31-1-2008. The show-cause notice was adjudicated. The benefit of CENVAT credit of services availed during this period was allowed to the appellants. Thereafter, a demand of Rs. 3,24,493/- was confirmed against the appellant along with penalty under Section 77 of Rs. 5000/- and the penalty of equivalent amount of service tax under Section 78 of the Finance Act, 1994. Aggrieved from the said order, the appellant is before me.

3. The Id. advocate for the appellant submits that as the appellant has surrendered the registration certificate on 19-9-2005 by availing the benefit of Notification 6/2005 as their taxable service below Rs. 4 lakhs. The allegation of suppression cannot be alleged against the appellant. Therefore, demand and extended period are not sustainable. On merits he fairly agreed that the appellant has no case.

4. He further submitted that although during adjudication, benefit of input service credit was given but not in all the cases on the ground that either the original invoice is not produced or the invoice are not bearing the service tax registration. Therefore, he prayed that the matter be remanded back to the adjudicating authority for requantifying the demand for the normal period of limitation by giving the benefit of input service credit for which appellants are ready to produce the original invoice and also undertake to produce service tax

registration for the invoices which are not bearing service tax registration.

5. On the other hand, Shri S. Kalra, Id. JDR appeared and submitted that the appellants were registered with the department under the category of banking and other financial service for service tax purposes. Therefore, they are aware of the provisions of service tax at the time of surrendering of the registration certificate they were well known whether benefit of Notification 6/2005 is available to them or not. Therefore, question of misinterpretation of Notification does not arise. It is a question of wilful suppression of the facts, hence the impugned order be confirmed. He further submitted that as the appellant has failed to produce the original invoice and service tax registration number is not mentioned in the invoice, therefore, the lower authorities have rightly denied the input service credit to the appellant. Hence, impugned order is to be upheld.

6. Heard and considered.

7. After considering the submissions made by both sides. I find that it is not a disputed fact that on 19-9-2005, the appellant had surrendered the service tax registration by availing the benefit of the Notifications 6/2005 dated 1-3-2005. As soon as the registration certificate has been surrendered by appellant, duty is cast on the department to verify whether the appellant has rightly gone out of the ambit of service tax or not. The department has not done this exercise within one year of the surrender of the registration certificate. Therefore, as held by this Tribunal in the case of *Needwise Advertising P. Ltd. v. CST, Ahmedabad - 2011 (21) S.T.R. 229 (Tri-Ahmd.)* that interpretation of surrender as revealing deliberate intention not to pay service tax is not sustainable as surrender of registration to be taken as made on belief of non-requirement of such registration. Therefore, onus is on revenue to find out the cause of surrendering registration if action is not taken at the same time, the same cannot be questioned subsequently. Therefore extended period is not invocable. Following, the ratio laid down in the above judgment, I hold that extended period of limitation is not invocable in this case.

8. The matter is sent back to the adjudicating authority to requantify the demand pertaining to normal period and to give the benefit of input service credit for normal period after due verification of the documents produced by the appellant in support of their claim. As extended period is not invocable, penalty under Section 78 is waived. The penalty under Section 77 is confirmed to the extent of Rs. 1000/-. With these observations, appeal is disposed of by way of remand as directed above by setting aside the impugned order.

(Dictated in Court)
