

# Bimal Jain

FCA, FCS, LLB, B.Com (Hons)

Dear Professional Colleague,

## **No liability to pay service tax again if assessee has deposited the service tax under wrong accounting code**

We are sharing with you an important judgement of the Hon'ble CESTAT, Mumbai in the case of **Arcadia Share & Stock Brokers Pvt. Ltd. Versus Commissioner of Central Excise & Customs, Goa [2013 (7) TMI 330 - CESTAT MUMBAI]** on following issue:

### **Issue:**

Whether the assessee is required to pay service tax again if he has deposited service tax under the wrong accounting code?

### **Facts & Background:**

M/s Arcadia Share & Stock Brokers Pvt. Ltd. ("**the Appellant**") was engaged in rendering stock broker services. However, the Appellant discharged service tax liability under the wrong accounting code i.e. service tax was remitted under the accounting code for education cess. The Department confirmed demand against the Appellant for non-payment of service tax under proper accounting code.

The Appellant appealed against the order of the Department before the lower appellate authority who rejected the appeal and hence the Appellant appealed before the Hon'ble CESTAT.

### **Held:**

It was held by the Hon'ble CESTAT that the Appellant is not required to pay service tax again in as much as they have paid service tax to the Government albeit under the wrong accounting code.

The Hon'ble CESTAT relied on the Board's clarification in Circular No. 58/07/2003-CX(ST) dated May 20, 2003 ("**the Circular**"). The Board has clarified in the Circular that an assessee shall not be asked to pay service tax again if he has paid service tax under a wrong accounting code. Further, similar decision was made by the Hon'ble Delhi Tribunal in the case of *Pepsico India Holding Pvt. Ltd. vs. Commissioner of Central Excise, Allahabad 2010 (255) ELT 299 (Tri-Del)* wherein it was held on basis of the Circular that the assessee is not liable to pay service tax again if he has discharged the service tax liability even though under a wrong accounting code.

Therefore, relying on the Circular and the above judgment, the Hon'ble Mumbai Tribunal rejected the contention of the authorities and decided the case in favour of the Appellant.

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*Hope the information will assist you in your Professional endeavors. In case of any query/information, please do not hesitate to write back to us.*

Thanks & Best Regards.

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