

Revenue Department cannot pass a demand order beyond the scope of the SCN

The CESTAT, Allahabad in the matter of *M/s. T.S. Motors India Private Ltd. v. Commissioner of CGST & Central Excise, Lucknow [Service Tax Appeal No. 70377 of 2018 dated June 17, 2022]* set aside the order passed by the Revenue Department demanding Service tax for alleged suppression of correct value of taxable service by invoking the extended period of limitation. Held that, the Show Cause Notice (“**SCN**”) has been issued without mentioning the reasons of the alleged suppression with an intention to evade payment of service tax. Further held that, extended period of limitation can only be evoked when “suppression” is shown to be wilful with intent to evade payment of service tax.

Facts:

M/s. T.S. Motors India Private Ltd. (“**the Appellant**”) is engaged in providing business auxiliary service. On scrutiny of the records of the Appellant for the period from 2004-2005 to 2007-2008 by Revenue Department, wherein, it was noticed that the Appellant had not paid service tax on several items of work, though these were part of the service rendered by the Appellant under business auxiliary service.

A show cause notice (“**SCN**”) was issued to the Appellant for non-payment of the Service tax and demanding the Service tax by invoking the extended period of limitation as contemplated under Section 73(1) of the Finance Act, 1994 (“**the Finance Act**”) which was confirmed vide order (“**the Impugned Order**”) by the Commissioner, CGST & Central Excise, Lucknow (“**the Respondent**”) holding that the extended period of limitation was rightly invoked, and the evasion of the Service Tax would not have been unearthed, in case the audit of the records of the Appellant was undertaken by the Revenue Department.

Being aggrieved, this appeal has been filed.

Issue:

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Whether the Respondent was justified in invoking the extended period of limitation in absence of wilful suppression on the part of the Appellant in the SCN?

Held:

The CESTAT, Allahabad in ***Service Tax Appeal No. 70377 of 2018 dated June 17, 2022*** held as under:

- Analysed the provision of Section 73(1) of the Finance Act and noted that, it nowhere mentions that suppression of facts has to be "wilful", since "wilful" precedes only misrepresentation. It is, therefore, to be inferred whether even in the absence of the expression "wilful" before "suppression of facts" it had still to be wilful with an intent to evade payment of service tax.
- Observed that, the SCN and the Impugned order passed by the Respondent alleging suppression of correct value on taxable services by the Appellant was without any reasoning.
- Relied on the judgments of the CEGAT, New Delhi in ***Nestor Pharmaceuticals Ltd. v. Commissioner of Central Excise, Delhi 2000 (116) ELT 477 (Tri.)*** and CESTAT, Mumbai in ***Tata Johnson Controls Automotive v. Commissioner of Customs., Mumbai 2004 (167) ELT 93 (Tri. Mum)***, wherein it was held that the Revenue Department cannot go beyond the scope of the SCN and decide the matter on a ground other than the grounds raised in the SCN.
- Stated that, the finding in the SCN has not only been recorded without giving reasons, but even otherwise the Impugned Order cannot go beyond the SCN.
- Set aside the Impugned Order.
- Held that, the Respondent was not justified in holding that the extended period of limitation under the Section 73(1) of the Finance Act was correctly invoked.

Relevant Provisions:

Section 73(1) of the Finance Act:

“73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded

(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within thirty months from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

PROVIDED that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of-

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "thirty months, the words "five years" had been substituted.”

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