

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

**PRINCIPAL BENCH**

**SERVICE TAX APPEAL NO. 54095 OF 2014**

(Arising out of Order-in-Original No. 68/ST/SRB/2014 dated 31.03.2014 passed by Commissioner of Service Tax, New Delhi- 110002)

**M/s. Hospitech Management  
Consultants Pvt. Ltd.**

UG-64, World Trade Centre,  
Barakhamba Avenue  
Connaught Place, New Delhi-110001

**...Appellant**

versus

**Commissioner of Service Tax**

Delhi, 17-B, IAEA House, MG Marg  
IP Estate, New Delhi-110002

**...Respondent**

**APPEARANCE:**

Dr. Prabhat Kumar, Consultant and Shri Karan Kanwal, Advocate for the Appellant.

Shri Harshvardhan, Authorized Representative for the Department

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)**

**Date of Hearing: 14.02.2023**

**Date of Decision: 15.05.2023**

**FINAL ORDER NO. 50658/2023**

**JUSTICE DILIP GUPTA:**

The order dated 31.03.2014 passed by the Commissioner of Service Tax, Commissionerate, New Delhi<sup>1</sup> has been assailed by M/s. Hospitech Management Consultants Pvt. Ltd.<sup>2</sup> in this appeal. The order seeks to confirm the demand of service tax of Rs. 65,75,890/- towards service said to have been provided by a 'management or business consultant' and an amount of Rs. 4,63,343/- towards service

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- 1. the Commissioner**
  - 2. the appellant**

said to have been provided by an 'architect', with interest and penalty by taking recourse to the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act, 1994<sup>3</sup>. The order also seeks to confirm the demand of CENVAT credit amounting to Rs. 12,360/- with penalty.

2. A show cause notice dated 22.10.2010 was issued to the appellant in regard to non-payment of service tax on the service provided by an 'architect' by alleging that the appellant had mis-classified the services as 'construction' services and, accordingly, taken benefit of the exemption provided under a Circular dated 17.09.2004. The show cause notice also alleged out that the appellant had provided 'management or business consultant' service, but had mis-classified it as construction service and taken benefit of the exemption Circular dated 17.09.2004. The show cause notice also alleged that the appellant had wrongly utilized CENVAT credit.

3. The appellant filed a detailed reply to the show cause notice, but the Commissioner confirmed the demand and the observations made in the order are as follows:

"16.1 \*\*\*\*\* From the above-stated statutory provisions and also the allegations made in the show cause notice, I note that the activities of the noticee include the services as providing Architectural, Engineering Design and Drawing work of construction, Consultancy Service for Construction of Medical Colleges and Hospitals, **wherein their scope of work is confined to Architecture, preparation of detailed drawing and design including structural design calculation for proper execution of works and visit to project site periodically as mutually agreed to offer interpretation of drawing/specification, supervision**

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3. the Finance Act

**of the project etc.** I note that the Construction Services cover in its activities any services provided or to be provided in relation to construction of complex. Any person engaged in the activity of construction service is bound to have incurred some amount towards purchase of construction material and also receipt of payment for the construction activities undertaken. However, the show cause notice has alleged that the Annual Accounts of the noticee did not reflect expenditure on account of purchase of construction materials and payment received on account of construction services. In case no amount is found to have been incurred towards purchase of construction materials, it cannot be held that the services rendered were construction services.

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**I find that the limbs of the definition of Architect Service are satisfied in the present case viz. provision of service, which the noticee have rendered** like Architectural, Engineering Design and Drawing Work, Consultancy Services for construction of Medical College and Hospitals where the scope of work was confined to Architecture, preparation of detailed drawing and design including structural design calculation for proper execution of works and visit to project site periodically as mutually agreed to offer interpretation of drawing/specification, supervision of the project etc.

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16.2 **The show cause notice has further proposed demand of service tax amounting to Rs. 5,20,612/- on the ground that the noticee had entered into agreements with their various clients to provide consultancy services for preparation of project report, interaction with the local Municipal corporation,** submission of preliminary cost estimates and getting necessary approval from the clients/local Municipal corporation for the proposed construction of Dental/Medical College Building etc., preparation and submission of detailed architectural working, drawing, design and specification of building/structure for construction and release to site including getting approval from the client/local bodies. **For these services the noticee had been charging consultancy fee from the**

**clients which were inclusive of all the cost of manpower spent, computer, software applied, preparation of design and drawing, detailed calculations, recalculations, redesigning, all guarantees, visit to the sites, visit to Delhi office etc. It is the allegation in the show cause notice that these services did not appear to be classifiable under the service category of Construction Services, and the exemption benefit under Para 13.2 of Circular No. 90/10/2004-ST dated 17.09.2004 did not appear to be admissible to the noticee for providing such taxable services. \*\*\*\***

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**16.3 I note that the show cause notice has brought on record that the noticee had entered into agreements with their various clients to provide consultancy services for preparation of project report, interaction with the local Municipal corporation, submission of preliminary cost estimates and getting necessary approval from the clients/local Municipal corporation for the proposed construction of Dental/Medical College Building etc., preparation and submission of detailed architectural working, drawing, design and specification of building/structure suitable for construction and release to site including getting approval from the client/local bodies. The show cause notice has further brought on record that for these services the noticee had been charging consultancy fee from the clients which were inclusive of all the cost of manpower spent, computer, software applied, preparation of design and drawing, detailed calculations, recalculations, redesigning, all guarantees, visit to the sites, visit to Delhi office etc. From the description of activities detailed in the show cause notice I find that these qualify to be more appropriately under Section 65(65) read with Section 65(105)(r) of the Finance Act, 1994 under the category of 'Management or Business Consultants Services' which covers in its ambit any services provided to any person by a management or business consultant in connection with the management of any organization or**

**business.** In any manner, which I find squarely cover the activities rendered by the noticee detailed above.”

**(emphasis supplied)**

4. Shri Prabhat Kumar, learned counsel for the appellant assisted by Shri Karan Kanwal, submitted that not only had the Commissioner committed an illegality in holding that the services provided by the appellant were not towards construction and were services provided either by an architect or by management or business consultant, but even otherwise the extended period of limitation could not have been invoked in the facts and circumstance of the case. Learned counsel, however, did not contest the order passed by the Commissioner to the extent it confirmed the demand of CENVAT credit amounting to Rs. 12,360/-.

5. Shri Harshvardhan, learned authorized representative appearing for the Department submitted that the order passed by the Commissioner does not suffer from any illegality.

6. The submissions advanced by the learned counsel for the appellant and the learned authorized representative appearing for the Department have been considered.

7. The first issue that arises for consideration is whether the extended period of limitation could have been invoked in the facts and circumstances of the case in regard to the two services because if it is held that the extended period limitation could not have been invoked, it would not be necessary to examine the dispute on merits.

8. The appellant is a registered assessee and had been filing returns under section 73(6)(i) of the Finance Act. The relevant date for calculation of the limitation period is from the date on which the

periodical return is to be filed. As per rule 7 of Service Tax Rules, 1994<sup>4</sup>, every assessee has to file a half yearly return by the 25th of the month following the particular half-year.

9. The following chart would indicate whether the entire demand deals with the extended period of limitation or portion of it deals with the normal period in respect of both the services and it is reproduced below:

| <b>Demand on Services performed under Architect Services</b> |  |   |
|--|--|---|
| <b>Period</b>  | <b>Normal Period of Limitation as per Section 73</b> | <b>Whether notice issued within normal or extended period</b> |
| 01.04.2005<br>to<br>30.06.2005                               | One year from the relevant date 25.07.2005           | Extended Period   |
| 01.07.2005<br>to<br>31.12.2005                               | One year from the relevant date 25.01.2006           | Extended Period   |
| 01.01.2006<br>to<br>30.06.2006                               | One year from the relevant date 25.07.2006           | Extended Period   |
| 01.07.2006<br>to<br>31.12.2006                               | One year from the relevant date 25.01.2007           | Extended Period   |
| 01.01.2007<br>to<br>30.06.2007                               | One year from the relevant date 25.07.2007           | Extended Period   |
| 01.07.2007<br>to<br>31.12.2007                               | One year from the relevant date 25.01.2008           | Extended Period   |
| 01.01.2008<br>to<br>30.06.2008                               | One year from the relevant date 25.07.2008           | Extended Period   |
| 01.07.2008<br>to<br>31.12.2008                               | One year from the relevant date 25.01.2009           | Extended Period   |
| 01.01.2009<br>to<br>30.06.2009                               | One year from the relevant date 25.07.2009           | Extended Period   |
| 01.07.2009<br>to<br>31.12.2009                               | One year from the relevant date 25.01.2010           | Normal Period   |
| 01.01.2010<br>to<br>30.03.2010                               | One year from the relevant date 25.07.2010           | Normal Period   |

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**4. the Service Tax Rules**

| <b>Demand on Services performed under Management or Business Consultancy Services</b> |  |   |
|---|--|---|
| <b>Period</b>   | <b>Normal Limitation as per Section 73</b> | <b>Whether notice issued within normal or extended period</b> |
| 01.03.2007 to 30.06.2007  | One year from the relevant date 25.07.2007 | Extended Period   |
| 01.07.2007 to 31.12.2007  | One year from the relevant date 25.01.2008 | Extended Period   |
| 01.01.2008 to 30.06.2008  | One year from the relevant date 25.07.2008 | Extended Period   |
| 01.07.2008 to 31.12.2008  | One year from the relevant date 25.01.2009 | Extended Period   |
| 01.01.2009 to 31.03.2009  | One year from the relevant date 25.07.2009 | Extended Period   |

10. It would be seen that in regard to the services performed by an architect, the period from 01.04.2005 to 30.06.2009 is not within the normal period but the period from 01.07.2009 to 30.03.2010 is within the normal period. In regard to the services said to have been performed by a management or business consultant, the entire period is covered by the extended period of limitation under the proviso to section 73(1) of the Finance Act.

11. The issue that arises for consideration, therefore, is whether the extended period of limitation as contemplated under the proviso to section 73(1) of the Finance Act has been correctly invoked in the facts and circumstances of the case. To examine this issue it would be necessary to examine the allegations made in the show cause notice dated 22.10.2010 in this regard and the finding recorded by the Commissioner.

12. The allegation made in the show cause notice in paragraph 6 is as follows:

"6. Whereas it further appears that the assessee by doing so, had intentionally and willfully suppressed the facts of providing impugned taxable services and calculation of impugned value of such taxable services and did not pay the Service Tax as applicable on such services and wrongly availed & utilized Cenvat Credit and did not file prescribed ST-3 returns. **Thus, by not disclosing the entire facts to the Department, the said value has escaped the assessment for Service Tax liability, resulting into contravention of various provisions of the said Act and the said Rules aforesaid with intention to evade payment of impugned Service Tax.** The fact of rendering of these services and wrongly availing & utilizing Cenvat Credit would not have come to the notice of the department but for the audit conducted by the department. Thus, it appears that the provision of proviso to Section 73 (1) of the Act ibid can be invoked and thus, demand and recovery can be made for non-payment of Service Tax for five years from the relevant date."

**(emphasis supplied)**

13. The order passed by the Commissioner has dealt with this issue in the following manner:

"15. **\*\*\*\*\* However, in order to further examine the issue of non-payment of service tax, the department not only made investigations with the Registrar, Guru Ghasidas University, Bilaspur, Chhattisgarh but also made correspondence with AGCR submitting their point of view. This is the reason that no show cause notice was issued to the noticee in the year 2006.** However, the matter attained further clarity from Department's point of view regarding applicability of service tax on the services rendered by the noticee when the records of the noticee were audited by the Service Tax Audit Branch where the records of the noticee were examined in



detail and the present show cause notice is the outcome of the examination conducted by the Service Tax Audit Branch.

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15.3 **Thus, it is possible to invoke extended period in the case of Service Tax even in situation where there is no intent to evade payment of tax.** Even if it is presumed that the Noticee has not contravened any provisions with intent to evade payment of Service Tax, yet Noticee has failed to comply with the obligations cast upon it by the Legislature. **There is no requirement that there should be suppression with intention to evade. Mere suppression is adequate for the purpose of the recovery of tax for the extended period as well as for imposing penalty under the service tax law.**

15.4 **I further note that the relevant facts were in the knowledge of the Service Tax Department in the year 2006 where it has been alleged in the show cause notice that the noticee suppressed real nature of service rendered and also receipt of income for rendering the taxable service viz. Architect Services or Management or Business Consultancy Services during the period 2005-06 onwards.** I find that in case fraud, suppression, wilful mis-statement etc. with an intent to evade payment of duty is established, the department is well within its rights to raise a demand within a period of five years from the relevant date.

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I find that the ratio of the above-cited judgment of the Hon'ble Supreme Court is squarely applicable to the facts of the instant case in as much as the noticee has not brought out anything on record to suggest that they ever declared the income received by them for rendering Architecture Services or Management or Business Consultancy Services to the Department. **These facts came to the knowledge of the department upon audit only.** As held by the Apex Court, the burden was on the noticee to file a proper

return or intimation with the department declaring therein the income received for rendering the above-stated two taxable services. Having failed to do so, I hold that the extended period of limitation is rightly invocable in the present case.”

**(emphasis supplied)**

14. The aforesaid show cause notice was assailed by the appellant in a writ petition before the Delhi High Court. This petition was disposed of on 24.01.2011 by the High Court with the following observations:

“One of the objections raised by petitioner is in respect of Service Tax Commissioner again going into the issue of classification of the services provided by the petitioner and as to whether the petitioner is exempt from payment of service tax. **This is for the period 2005-06 to 2008-09. It is only in case of fraud or suppression of material fact(s), the question of re-assessment would arise. It is the case of the petitioner that there is no suppression and the matter in controversy is only in respect of classification of the services provided by the petitioner as aforesaid. In support of his plea, learned counsel for the petitioner seeks to rely upon certain audit memos issued inter se the Department including one dated 18.01.2006 as reflected in the order dated 11.09.2006** (passed by the Assistant Commissioner (Service Tax) and the queries posed to the client of the petitioner who has paid the amount in respect of which service tax is sought to be recovered.

**On hearing learned counsel for the parties, we are of the considered view that it is appropriate that the matter should first be examined by the Service Tax Commissioner before this court goes into the question.** Since the show cause notice is composite both for the aforesaid period and the current period, it would be appropriate for the Service Tax Commissioner to first examine the issue as to how for the aforesaid period is the matter sought to be opened.

Thus, that issue would be determined first. The petitioner may file response to the show cause notice within a period 10 days from today whereafter a next date will be fixed for hearing before the Service Tax Commissioner and an order will first be passed on the aforesaid aspect. The petitioner has the liberty to challenge the order in case of an adverse verdict and the other questions raised in the present petition are also thus kept open.”

**(emphasis supplied)**

15. The contention of the learned counsel for the appellant is that the necessary ingredients for invoking the larger period of limitation contemplated under the proviso to section 73 (1) of the Finance Act, namely wilful suppression of facts with an intent to evade payment of service tax do not exist and, therefore, the extended period of limitation could not have been invoked.

16. In order to appreciate this contention it would appropriate to reproduce section 73 of the Finance Act as it stood at the relevant time. This section deals with recovery of service tax not levied or paid or short levied or short paid or erroneously refunded. It is as follows;

“**73.(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 one year 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 "one year", the words "five years" had been substituted."

17. It would be seen from a perusal of sub-section (1) of section 73 of the Finance Act that where any service tax has not been levied or paid, the Central Excise Officer may, within one year from the relevant date, serve a notice on the person chargeable with the service tax which has not been levied or paid, requiring him to show cause why he should not pay amount specified in the notice.

18. The 'relevant date' has been defined in section 73 (6) of the Finance Act as follows;

**"73(6)** For the purpose of this section, "relevant date" means,-

- (i) In the case of taxable service in respect of which service tax has not been levied or paid or has been short-levied or short paid-

- (a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;

- (b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;

- (c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder;"

19. The proviso to section 73(1) of the Finance Act stipulates that where any service tax has not been levied or paid by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Chapter or the Rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax, the provisions of the said section shall have effect as if, for the word "one year", the word "five years" has been substituted.

20. Learned authorised representatives appearing for the Department have, however, supported the finding recorded by the Commissioner in the impugned order that the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act was correctly invoked.

21. There is substance in the contention advanced on behalf of the appellant that mere suppression of fact is not enough as it has also to be conclusively established that suppression was wilful with an intent to evade payment of service tax. The Commissioner in paragraph 15.3 of the order (which has been reproduced in paragraph 12 of this order) took a view that "it is possible to invoke extended period in the case of service tax even in a situation where there is no intent to evade payment of service tax."

22. It is correct that section 73 (1) of the Finance Act does not mention that suppression of facts has to be "wilful" since "wilful" precedes only misstatement. It has, therefore, to be seen whether even in the absence of the expression "wilful" before "suppression of facts" under section 73(1) of the Finance Act, suppression of facts has still to be willful and with an intent to evade payment of service tax.

The Supreme Court and the Delhi High Court have held that suppression of facts has to be "wilful" and there should also be an intent to evade payment of service tax.

23. Before adverting to the decisions of the Supreme Court and the Delhi High Court, it would be useful to reproduce the proviso to section 11A of Central Excise Act, 1944, as it stood when the Supreme Court explained "suppression of facts" in **Pushpam Pharmaceutical Co. vs. Commissioner of Central Excise, Bombay**<sup>5</sup>. It is as follows:

**"11A:** Where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, by the reason of-

- (a) fraud; or
- (b) collusion; or
- (c) any wilful misstatement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Act of the rules made thereunder with intent to evade payment of duty

by any person chargeable with the duty, the Central Excise Officer shall, within five years from the relevant date, serve notice on such person requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under Section 11AA and a penalty equivalent to the duty specified in the notice."

24. In **Pushpam Pharmaceuticals Company**, the Supreme Court examined whether the Department was justified in initiating proceedings for short levy after the expiry of the normal period of six months by invoking the proviso to section 11A of the Excise Act. The proviso to section 11A of the Excise Act carved out an exception to

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5. **1995 (78) E.L.T. 401 (SC)**

the provisions that permitted the Department to reopen proceedings if the levy was short within six months of the relevant date and permitted the Authority to exercise this power within five years from the relevant date under the circumstances mentioned in the proviso, one of which was suppression of facts. It is in this context that the Supreme Court observed that since "suppression of facts" has been used in the company of strong words such as fraud, collusion, or wilful default, suppression of facts must be deliberate and with an intent to escape payment of duty. The observations are as follows;

"4. Section 11A empowers the Department to re-open proceedings if the levy has been short-levied or not levied within six months from the relevant date. **But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts.** The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of court the context in which it has been used indicates otherwise. **A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty.** Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

**(emphasis supplied)**

25. This decision was referred to by the Supreme Court in **Anand Nishikawa Company Ltd. vs. Commissioner of Central Excise**<sup>6</sup> and the observations are as follows:

"26..... This Court in the case of Pushpam Pharmaceutical Company v. Collector of Central Excise, Bombay, while dealing with the meaning of the expression "suppression of facts" in proviso to Section 11A of the Act held that the term must be construed strictly. **It does not mean any omission and the act must be deliberate and willful to evade payment of duty.** The Court, further, held :-

"In taxation, it ("suppression of facts") can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."

27. Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. v. Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462], we find that **"suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty.** When facts were known to both the parties, the omission by one to do what he might have done not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made herein above that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in proviso to Section 11A of the Act."

**(emphasis supplied)**

26. These two decisions in **Pushpam Pharmaceuticals** and **Anand Nishikawa Company Ltd.** were followed by the Supreme

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6. 2005 (188) E.L.T. 149 (SC)



Court in the subsequent decision in **Uniworth Textile Limited vs. Commissioner of Central Excise, Raipur**<sup>7</sup> and the observation are:

“18. We are in complete agreement with the principal enunciated in the above decisions, in light of the proviso to section 11A of the Central Excise Act, 1944.”

27. The Supreme Court in **Continental Foundation Joint Venture Holding vs. Commissioner of Central Excise, Chandigarh-I**<sup>8</sup> also held:

“10. The expression “suppression” has been used in the proviso to Section 11A of the Act accompanied by very strong words as ‘fraud’ or “collusion” and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty. **Suppression means failure to disclose full information with the intent to evade payment of duty.** When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct.”

**(emphasis supplied)**

28. The Delhi High Court in **Bharat Hotels Limited vs. Commissioner of Central Excise (Adjudication)**<sup>9</sup> also examined at length the issue relating to the extended period of limitation under the proviso to section 73 (1) of the Finance Act and held as follows;

“27. Therefore, it is evident that failure to pay tax is not a justification for imposition of penalty. Also, the word “suppression” in the proviso to Section 11A(1) of the Excise Act has to be read in the context of other words in

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7. **2013 (288) E.L.T. 161 (SC)**  
 8. **2007 (216) E.L.T. 177 (SC)**  
 9. **2018 (12) GSTL 368 (Del.)**

the proviso, i.e. "fraud, collusion, wilful misstatement". As explained in Uniworth (supra), "misstatement or suppression of facts" does not mean any omission. It must be deliberate. **In other words, there must be deliberate suppression of information for the purpose of evading of payment of duty. It connotes a positive act of the assessee to avoid excise duty.**

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**Thus, invocation of the extended limitation period under the proviso to Section 73(1) does not refer to a scenario where there is a mere omission or mere failure to pay duty or take out a license without the presence of such intention."**

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**The Revenue has not been able to prove an intention on the part of the Appellant to avoid tax by suppression of mention facts. In fact it is clear that the Appellant did not have any such intention and was acting under a bonafide belief."**

**(emphasis supplied)**

29. It would also be useful to refer to a decision of the Tribunal in **Shiv-Vani Oil & Gas Exploration Services Ltd. vs. C. S. T., New Delhi<sup>10</sup>**, wherein the Tribunal after making reference to the decision of the Supreme Court in **Cosmic Dye Chemical vs. CCE, Bombay<sup>11</sup>**, observed that there should be an intent to evade payment of service tax if the extended period of limitation has to be invoked. The observations are as follows:

**"8.** Regarding the demand for extended period, we find the reason given by the Original Authority is not legally sustainable. In fact he recorded that in terms of proviso to Section 73 of Finance Act, 1994, the intention to evade payment of duty is not required to invoke extended period or

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**10. 2017 (47) STR 200 (Tri-Del.)**

**11. 1995 (75) E.L.T. 721 (SC)**

to impose penalty. We find that for invoking extended period as well as for imposing penalty under Section 78, the legal provisions are identical. The words used like fraud, collusion, willful mis-statement, suppression of fact or contravention of any provisions of Chapter V of Finance Act, 1994 or of the Rules made thereunder with intent to evade the payment of Service Tax, will show that the ingredient of mala fide is a pre-requisite to invoke both the legal provisions (proviso to Section 73 and Section 78). The Original Authority recorded that it may be true that the assessee has not contravened any provisions with intent to evade payment of service tax, however, he proceeded to confirm the demand for extended period and to impose penalty of an equal amount under Section 78. We find that Hon'ble Supreme Court in *Cosmic Dye Chemical v. CCE, Bombay* reported in 1995 (75) E.L.T. 721 (S.C.) held as below :-

Now so far as fraud and collusion are concerned, it is evident "6. that the requisite intent, i.e., intent to evade duty is built into these very words. So far as mis-statement or suppression of facts are concerned, they are clearly qualified by the word "wilful" preceding the words "mis-statement or suppression of facts" which means with intent to evade duty. The next set of words "contravention of any of the provisions of this Act or Rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not wilful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Misstatement or suppression of fact must be wilful."

30. It is, therefore, clear from the aforesaid discussion that the extended period of limitation could have been invoked only if there was suppression of facts with intent to evade payment of service tax.

31. Such being the position, the demand made for the extended period in so far as 'architect' services and 'management or business

consultant' services are concerned deserves to be set aside and is set aside.

32. There is no demand for the normal period so far as 'management or business consultant' services are concerned. However, the period from 01.07.2009 to 30.03.2010 would fall within the normal period so far as architect services is concerned and, therefore, it would have to be examined whether the demand could have been confirmed under this head.

33. The Commissioner has found as a fact from the agreement that the scope of work of the appellant was confined to architecture, preparation of detail drawing and design, including structural design, calculation for proper execution of work and visit to the project site periodically. It is not possible to accept the contention of the learned counsel for the appellant that the work required to be performed by the appellant would fall under 'construction' services as there is nothing in the agreement nor anything could be pointed out by the learned counsel appearing for the appellant that the nature of work required to be performed by the appellant would fall under 'construction services'. It was imperative for the appellant to have led evidence to substantiate that any construction work was required to be performed by the appellant under the agreement.

34. There is, therefore, no error in the finding recorded by the Commissioner that the appellant did not perform construction services and the work performed by the appellant would appropriately fall under the 'architect' services.

35. The appellant has not contested the order passed by the Commissioner to the extent it has confirmed the demand of CENVAT credit amounting to Rs. 12,360/-.

36. Thus, for the reasons stated above, the order passed by the Commissioner confirming the demand of service tax for the extended period of limitation in so far as the 'architect' services and 'management or business consultant' services are concerned is set aside. However, the demand confirmed for the normal period for architect services as also the demand for CENVAT credit is upheld. The appeal is, accordingly, allowed to extent indicated above.

(Order pronounced on **15.05.2023**)

**(JUSTICE DILIP GUPTA)**  
**PRESIDENT**

**(HEMAMBIKA R. PRIYA)**  
**MEMBER (TECHNICAL)**

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
NEW DELHI**

**PRINCIPAL BENCH**

**SERVICE TAX APPEAL NO. 54095 OF 2014**

(Arising out of Order-in-Original No. 68/ST/SRB/2014 dated 31.03.2014 passed by Commissioner of Service Tax, New Delhi- 110002)

**M/s. Hospitech Management  
Consultants Pvt. Ltd.**

UG-64. World Trade Centre,  
Barakhamba Avenue  
Connaught Place, New Delhi-110001

**...Appellant**

versus

**Commissioner of Service Tax**

Delhi, 17-B, IAEA House, MG Marg  
IP Estate, New Delhi-110002

**...Respondent**

**APPEARANCE:**

Dr. Prabhat Kumar, Consultant and Shri Karan Kanwal, Advocate for the Appellant.

Shri Harshvardhan, Authorized Representative for the Department

**CORAM:**

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT**

**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**Date of Hearing: 14.02.2023**

**ORDER**

Order Pronounced on **15.05.2023.**

**(JUSTICE DILIP GUPTA)  
PRESIDENT**

**(P. ANJANI KUMAR)  
MEMBER (TECHNICAL)**