CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH – COURT NO. III

Service Tax Appeal No.53520 of 2015 (DB)

(Arising out of Order-in-Original No.04/2015-2016 dated 15.07.2015 passed by the Commissioner, Central Excise, Delhi-II)

M/s. Quality Council of India, **Appellant**
2nd Floor, Institutions of Engineers Building,
Bahadur Shah Zafar Marg,
New Delhi-110 002.

Versus

Commissioner of Central Excise, **Respondent**
C.R. Building, I.P. Estate,
New Delhi-110 002.

APPEARANCE:

Shri Bimal Jain, Advocate for the appellant.
Shri Rohit Issar, Authorised Representative for the respondent.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

FINAL ORDER NO.51062/2023

DATE OF HEARING:26.07.2023
DATE OF DECISION:17.08.2023

BINU TAMTA:

The present appeal has been filed challenging the Order-in-Original No.04/2015-16 dated 15.07.2015, whereby the Commissioner, Central Excise, partly confirmed the demand under the show cause notice.

2. The appellant is registered with the Service Tax Department and is providing services viz. "Management Consultancy" and "Scientific and Technical Consultancy" covered under Section 65(105)(r) and (105) (za) of the Finance Act, 1994. During the scrutiny of half yearly ST-3 Service Tax

Returns, Balance Sheet and figures provided by the appellant for the period 2007-2008 to 2010-2011, it was observed that the appellant had not paid service tax on the gross receipts under the Head "Quality Conclave" and "Seminar Receipts" taxable under the category of "Convention Service" and also on the expenditure incurred on the "Sponsorship Service" under RCM as well as on the Grants/Contribution received from the Government, which were taxable under the category of 'Event Management Service'. Accordingly, show cause notice dated 19.10.2012 was issued in respect of the said three services falling under Section 65 (105)(zc), 65(105)(zzzn) and 65(105)(zu) of the Act.

3. The show cause notice was adjudicated by the impugned order, where the learned Commissioner held that during the period 2007-2008 and 2008-2009, there was no income from 'Quality Conclave' and 'Seminar receipts' and hence the demand for the said period was dropped. However, during the FY 2009-2010 to 2011-2012, income of Rs.1,65,18,639/- was received under the said heading, which was leviable to service tax. Similarly, for the service tax liability under the category of 'Sponsorship Service', the Adjudicating Authority held that the details submitted by the noticee were not supported by the documentary evidence and the explanation given is an after-thought so as to compress the taxable value of the services. The demand in respect of the third category of 'Event Management Service' was dropped on the ground that the appellant cannot be termed as 'Event Manager' and the activities performed by them do not fall under that category.

4. The appellant has filed this appeal challenging the demand confirmed by the Adjudicating Authority in respect of 'Convention Services' and

'Sponsorship Services' during the period, as referred above. The factual averment made by the learned counsel was that:-

4.1 The QCI is a non-profit autonomous body of Department of Industrial Policy and Promotion ("the DIPP") under the Ministry of Commerce and Industry registered as a society under Societies Registration Act, 1860, which was jointly set up by the Government of India and the three prominent associations of the Industries i.e. Associated Chambers of Commerce and Industry of India **("ASSOCHAM")**, Confederation of Indian Industry **("CII")** and Federation of Indian Chamber of Commerce & Industry (**"FICCI"),** registered under Section 12AA of Income Tax Act, 1961 ("**the Income Tax Act").**

4.2 Keeping in view the mission; "Quality for National Well Being", QCI is playing a pivotal role at the national level in propagating, adoption and adherence to quality standards in all important spheres of activities including education, healthcare, environment protection, governance, social sectors, infrastructure sector and such other areas of organized activities that have significant bearing in improving the quality of life and well-being of the citizens of India.

4.3 To achieve the stated objective, QCI is conducting Quality Conclave and Seminars and also advertise Quality Improvement Standards at various events conducted by the other organizations and give accreditation to Management System Certification Bodies in accordance with the International Standard ISO/IEC Guide 62 and 66 supported by International Accreditation Forum ("**IAF")** and operate accreditation programme for healthcare organization. Further, QCI gets grants from the Government of India for the same.

5. The present appeal has been filed, *inter alia,* on the following grounds:-

> "The definition of 'Taxable Services', applicable upto May 15, 2008 and also, as amended, w.e.f. May 15, 2008, is not applicable, to the present case, as their delegates are not their clients and also in terms of the definition of 'Convention' as defined under Section 65(32) of the Act, Convention means, "a formal meeting or assembly, which is not open to the general public, but in their case, the meeting or assembly is open to the general public."

It appears that such argument was not taken by the appellant before the Adjudicating Authority, as it appears from the impugned order. In order to maintain the demand for the FY 2009-2010, 2010-2011 and 2011-2012, the Adjudicating Authority merely observed that :-

> "6.4 I have carefully gone through the instant show cause notice and find that para 3 of the show cause notice reads as under:-
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> "It has been observed that the assessee has received amount under the head "Quality Conclave and Seminar Receipts" during the period 2007-08 to 2010-11."
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> 6.5 I have very carefully gone through the Balance Sheets and all the other documents available on record and find that income from "Quality Conclave Seminar Receipts" finds a mention in the Balance Sheets pertaining to the F.Y 2009-2010, 2010-2011 & 2011-12 only. For the F.Y. 2007-2008, head of income in the Balance Sheets has been shown as **Honorarium, Sale of Packs and Misc. Receipts** and for the F.Y. 2008-2009, the head of income has been shown as **Honorarium, Sale of Quality Literature & Misc. Receipts.**
>
> 6.5 I find that there is no document/evidence on record to prove that in the F.Y. 2007-2008 & 20008-2009, the notice had earned any income from Quality Conclave Seminar receipts. Income from Honorarium, Sale of Packs/Quality Literature & Misc. income cannot be presumed to be income earned from Convention services. Therefore, I am of the considered opinion that in the absence of any documentary evidence, it will be great injustice and against the principles of natural justice to

demand service tax under Convention Services for the F.Y. 2007-08 & 2008-09 and service tax can be demanded only for the F.Y. 2009-2010, 2010-2011 and 2011-2012.

6.6 In the light of the above facts, taxable value for Convention Services is reworked as under:-

S.No.	Year	Amount Received (in Rs.)
1.	2009-2010	44,43,800
2.	2010-2011	56,05,205
3.	2011-2012	64,69,634
Grant Total		1,65,18,639

6.7 I find that the notice have not disputed their liability for payment of service tax under Convention Services. They have only disputed the value of taxable services. At the time of personal hearing held on 20.01.2015, the notice themselves disclosed that they were now paying service tax on Convention services. I am of firm view that the notice are liable to pay service tax on taxable value of Rs.1,65,18,639/- under Convention Services."

6. So far as the 'Sponsorship Services' were concerned, the submission of the appellant was that expenditure shown in the balance sheets on 'Sponsorship/Awareness Programme/Seminar' include various expenditures, which were actually not related to the Sponsorship/Awareness Programme but were clubbed together only for accounting purposes. He referred to the expenditures incurred including News letter, Website Development Charges, Travel expenses, Banquet and Room rent, etc. The Adjudicating Authority rejected the contention of the appellant observing that :-

"6.8 I find that in their reply dated 29.01.2015, the notice have argued that the expenditure shown in the Balance Sheets on Sponsorship/Awareness Programmes/Seminar included various expenditures, which were not related to Sponsorship/Awareness etc.' that such expenditures were clubbed together for accounting purpose and that the expenditures incurred

> included Newsletter, Website development charges, travel expenses, Banquet and Room Rent, etc. The noticee also submitted some Annexures giving some vague details regarding expenses pertaining to above heads. I further find that the noticee have bee submitting contradictory figures of the amount spent by them on various activities including the amount spent on Sponsorship Services and on input services, where they claimed to have paid service tax to their vendors but did not claim the benefit of Cenvat credit. I have carefully gone through the details/annexure submitted by the notice. I find that the noticee have not disputed their liability for payment of service tax under Sponsorship Services as demanded in the show cause notice. They have only disputed the value of taxable services. At the time of personal hearing held on 20.01.2015, the noticee themselves disclosed that they were now paying service tax on expenditure incurred by them on Sponsorship Services. I find that the details submitted by the notice regarding taxable value are not supported by any documentary evidence and are very vague in nature and the same cannot be accepted to be authentic.
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> 6.9 I am of the considered opinion that it is an afterthought of the notice to compress the taxable value of the services so that their service tax liability is reduced considerably. I am of the firm opinion that the amount of taxable services as reflected in the Balance Sheets for the relevant period is authentic.

7. In support of his challenge to the 'Sponsorship Services', the appellant has submitted before us that as per the definition of 'Sponsorship Service', as given under Section 65(105)(zzzn), the same needs to be provided to 'anybody corporate' or 'Firm', whereas the appellant does not qualify to be a 'Body Corporate', as they are a 'Society', registered under the 'Societies Registration Act'. The learned Counsel citing the decisions of the Tribunal and the Apex Court contended that the impugned order is a non-speaking order and, therefore, needs to be set aside.

8. Learned Authorized Representative for the Revenue has opposed the present appeal referring to the Order-in-Original, wherein it is specifically noted that the appellant had not disputed the service tax liability for either of the two services viz. 'Convention Service' or of 'Sponsorship Service' and

had submitted that during the personal hearing the appellant themselves disclosed that they were now paying service tax on the services. Referring to the earlier show cause notices dated 24.10.2008, 20.04.2012 and 31.03.2013, he submitted that the issues involved were totally different as they covered the services under the category of 'Technical Inspection' and 'Certification' and, therefore, the extended period of limitation has been rightly invoked.

9. Having perused the impugned order, we are of the considered view that the appellant is right in submitting that the order under challenge is a non-speaking order as no reasoning is reflected. The Adjudicating Authority should have atleast appreciated the services rendered by the appellant with reference to the definition of the services as given in the respective clauses. We do not find any discussion, which would show any application of mind so as to arrive at a conclusion that the services rendered fall within the definition clause. That time and again, it has been reiterated by the superior courts that while deciding the issue either way, it is incumbent that it is duly supported by reasons, which would reflect the mind of the Court. The learned Counsel for the appellant referred to the decision of the Gujarat High Court in **Commissioner of Central Excise and Customs V Chandubhau Shiroya - 2010 (18) STR 526 (Guj)**, wherein relying on the decision of the Apex Court in **State of Rajasthan V Rajendra Prasad Jain - JT 2008 (3) SC 159,** the Gujarat High Court laid emphasis on giving reasons in support of the decision and observed :

> **"9.** The legal position in this regard is, by now, well-settled. The giving of reasons in support of their conclusions by judicial, quasi-judicial and administrative authorities when exercising jurisdiction is imperative, in order to avoid any element of arbitrariness or unfairness

which may attach to unreasoned conclusions. The Tribunal is a quasi-judicial forum and while deciding matters, it has to bear in mind that a speaking order is required to be passed as it is adjudicating upon the Order-in-Appeal made by the Commissioner (Appeals) in which the Order-in-Original has merged. As the order made by the Tribunal is an appealable one, it should be ensured that it is founded on cogent reasons. The reasons contained in an order may not be lengthy or elaborate but, at the same time, they must reflect proper application of mind and an understanding of the pros and cons of the matter, as well as the legal position, which has led the Tribunal to come to its conclusion, more so, when the conclusion arrived at by the Tribunal differs from the conclusion arrived at by the adjudicating and Appellate Authorities.

10. In *State of Rajasthan* v. *Rajendra Prasad Jain - JT* 2008 (3) SC 159, the Supreme Court has held as under :

"……The manner in which appeal against acquittal has been dealt with by the High Court leaves much to be desired. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief in its order, indicative of an application of its mind; all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. Similar view was expressed in *State of U.P*. v. *Battan and Ors*. [JT 2000 (8) SC 50; 2001 (10) SCC 607J. About two decades back in *State of Maharashtra* v. *Vithal Rao Pritirao Chawan* [AIR 1982 SC 1215] the desirability of a speaking order while dealing with an application for grant of leave was highlighted. The requirement of indicating reasons in such cases has been judicially recognized as imperative. The view was reiterated in *Jawahar Lal Singh* v. *Naresh Singh and Ors*. [JT 1987 (1) SC 388; 1987 (2) SCC 222]. Judicial discipline to abide by declaration of law by this Court, cannot be forsaken, under any pretext by any authority or Court, be it even the highest Court in a State, oblivious to Article 141 of the Constitution of India, 1950 (in short the 'Constitution').

8. Reason is the heartbeat of every conclusion, and without the same it becomes lifeless. (See *Raj Kishore Jha* v. *State of Bihar and Ors*. [JT 2003 (Suppl. 2) SC 354]).

9. Even in respect of administrative orders, Lord Denning M.R. in *Breen* v. *Amalgamated Engineering Union* [1971 (1) All ER 1148] observed "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd.* v. *Crabtree* [1974 ICR 120]

(NIRC) it was observed : "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

10. The above position was highlighted in *State of Orissa* v. *Dhaniram Luhar* [JT 2004 (2) SC 172; 2004 (5) SCC 568]."

11. This Court has, similarly, also time and again reiterated the necessity of giving reasons by the Tribunal. In Tax Appeal No. 81 of 2005 - *Jay Enterprises* v. *Commissioner of Central Excise* decided on 4-5-2005, this Court has summed up the legal position in the following terms :

"It is necessary for CEGAT to assign reasons while disposing of an appeal before it. Reasons are the soul of the proceedings including the order of CEGAT and in absence of the same the order remains merely a shell without any substance. It is not necessary that CEGAT pass an elaborate order, but at the same time the body of the order must reflect that CEGAT is aware of the aforestated legal position and the order, when read as a whole, must reflect application of mind. It is for this purpose that reasons are required to be assigned, howsoever brief they may be."

In Special Civil Application No. 22931 of 2005 - *Shree Devkrupa Ship Breaking* v. *Union of India* decided on 30-11-2005, this Court held that :

"6. It is thus apparent on plain perusal of the impugned order that CESTAT, which is the final fact finding authority, ought to have taken due care and shown greater consideration to the case than is shown by the order under challenge. As laid down by the Apex Court in the case of *Standard Radiators Pvt. Ltd*. (supra) "It is

expected that it will discuss the facts in some detail and not cursorily and come to briefly stated conclusions on that basis".

7. The impugned order unfortunately does nothing of that sort as already noticed hereinbefore. The entire order is silent as to what were the contentions raised before it by both the sides, what were the material facts for decision, what was the evidence pro and contra in relation to the said issue and what was the finding of facts on each of the contentions raised before CESTAT by both the sides. During course of hearing, a faint attempt on behalf of the respondent authority was made to submit that once the Tribunal accepts the findings recorded by Commissioner (Appeals) it is not necessary for it to reiterate the same and hence no fault should be found with the impugned order. The proposition would have been acceptable provided the impugned order had even given an indication to this effect. The Tribunal has not even cared to state that the findings recorded by the Commissioner (Appeals) are not disputed. In fact, the principal grievance on behalf of the petitioner is that none of its submissions have been taken into consideration.

8. There is one more reason why CESTAT is required to give reasons after recording findings while passing an order. The said order is amenable to statutory appeal. How does the High Court, which is an appellate authority under the statute, appreciate the correctness or otherwise of an order made by CESTAT in absence of any reason in the order made by CESTAT. For this reason also the impugned order cannot be permitted to stand."

The above are just a few extracts from relevant judgments elaborating upon the settled legal position which is no longer *res integra*. No doubt, there are a catena of judgments stating the necessity of passing reasoned orders.

13. It can also be said that the reasons are like the bricks with which the edifice of justice is built. If the bricks are not in place, or are missing, the entire edifice comes crashing down. The conclusions arrived at by a judicial or quasi-judicial authority should rest upon the foundation or reasons and cannot be sustained if they are in the air. An order passed by a quasi-judicial forum has to be supported by convincing and cogent reasons, howsoever brief they may be."

10. Similarly, the other decision referred by the learned Counsel for the appellant is **Commissioner of Central Excise & Customs, Daman Vs. Bilag Industries Pvt. Ltd. - 2011(264) ELT 195 (Guj),** where again the learned Division Bench reiterated the principle of supporting the findings with reasons.

11. The appellant has also challenged that the show cause notice issued is time barred and the extended period of limitation is not applicable since the Department has on earlier occasion already issued show cause notices dated 24.10.2008 and 20.04.2012 to them.

12. On the issue of extended period of limitation under the provisions of section 73(1) of the Act, the Adjudicating Authority observed that the appellant have not contested the same and though the 'Convention Services' and 'Sponsorship Services' were made taxable with effect from 16.07.2001 and 01.05.2006 respectively but the appellant failed to get these services included in their Registration Certificate and also failed to declare them in the ST-3 Returns. On that basis, he concluded that the appellant willfully suppressed the information with an intent to evade service tax liability and, therefore, imposed the penalty under Section 77 and 78 of the Act. We are constrained to say that the Adjudicating Authority has not even discussed the basic ingredients for invoking the extended period of limitation. The order is completely silent as to any findings of fact on fraud, collusion or wilful misstatement or suppression of facts or violation of provisions of the Act or the Rules.

13. The learned Counsel for the appellant has referred to the decision of the Apex Court in **Pahwa Chemicals Pvt. Ltd. V Commissioner of Central Excise, Delhi - 2005(189)ELT 257(SC)** to

say that there is mis-declaration or wilful suppression, there must be some positive act on the part of the party. Relevant para is quoted below:

> "3. It is settled law that mere failure to declare does not amount to willful mis-declaration or willful suppression. There must be some positive act on the part of the party to establish either willful mis-declaration or willful suppression. When all facts are before the Department and a party in the belief that affixing of a label makes no difference does not make a declaration, then there would be no willful mis-declaration or willful suppression."

14. Similarly, is the decision in the case of **Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur - 2013(288) ELT 161 (SC),** where the Apex Court referred to series of its earlier decisions and observed as:

> **"12.** The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or suppression of facts is, in our opinion, untenable. If that were to be true, we fail to understand which form of non-payment would amount to ordinary default? Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. In our opinion, the main body of the Section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or willful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso.
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> **19.** Thus, Section 28 of the Act clearly contemplates two situations, viz. inadvertent non-payment and deliberate default. The former is canvassed in the main body of Section 28 of the Act and is met with a limitation period of six months, whereas the latter, finds abode in the proviso to the section and faces a limitation period of five years. For the operation of the proviso, the intention to deliberately default is a mandatory prerequisite.
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> **26.** Hence, on account of the fact that the burden of proof of proving *mala fide* conduct under the proviso to Section 28 of the Act lies with the Revenue; that in furtherance of the same, no specific averments find a

> mention in the show cause notice which is a mandatory requirement for commencement of action under the said proviso; and that nothing on record displays a willful default on the part of the appellant, we hold that the extended period of limitation under the said provision could not be invoked against the appellant.)

15. In the light of the principles enunciated in the various decisions few of which are referred above, we are of the considered opinion that the impugned order is unsustainable and deserves to be set aside. Since we have arrived at the conclusion that the impugned order is bad for want of reasons, we are remitting the matter back to the Adjudicating Authority to decide the issues on merits as well as on extended period of limitation and on interest and penalty afresh after recording reasons in support thereof. Liberty is granted to both the parties to raise all contentions as are open to them in law.

16. Appeal is, accordingly allowed by way of remand.

[Order pronounced on 17th August, 2023]

(**BINU TAMTA**)
Member (Judicial)

(**HEMAMBIKA R. PRIYA,**)
Member (Technical)

Ckp.