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Date: 08.06.2025

CESTAT Delhi Ruling Favors Wellworth on Service Tax Limitation Grounds

The Customs, Excise & Service Tax Appellate Tribunal (CESTAT), Principal Bench, New Delhi, *M/s. Wellworth Project Developers Pvt. Ltd.* secured major relief as the Tribunal set aside the bulk of a ₹2.4 crore service tax demand. The case revolved around the invocation of the extended limitation period under Section 73(1) of the Finance Act, 1994, for the period 2013–18.

Key Case Highlights:

- **Background:** The dispute stemmed from a Show Cause Notice (SCN) dated 11.10.2019 that raised a demand of ₹2,40,96,546/- covering legal services, corporate guarantees, and advances from customers. The Commissioner had confirmed this demand along with interest and penalties, citing suppression of facts under the extended limitation period.
- **Appellant's Stand:** Represented by Advocate, the appellant contended that:
    - Most of the demand, especially for FY 2013–14, was time-barred even under the extended limitation of five years.
    - No mala fide suppression or intent to evade tax existed; the company had cooperated fully during investigation.
    - The demand on corporate guarantees was untenable in light of the Supreme Court ruling in *Edelweiss Financial Services Ltd.*.
    - Service tax on advances was incorrectly calculated and wrongly attributed to the closing balances.

- **Department's Position:** The Revenue, defended the impugned order and justified invocation of the extended limitation period based on the appellant's failure to disclose accurate taxable values.

CESTAT's Ruling:

- **Time-Barred Demand:** The Tribunal categorically held that the demand for FY 2013–14 (₹2.24 crore) was raised beyond the permissible five-year window, rendering it time-barred.
- **No Justification for Extended Limitation:** Relying on landmark rulings including *Pushpam Pharmaceuticals*, *Anand Nishikawa*, and *Uniworth Textiles*, the Tribunal ruled that:
    - Suppression must be deliberate and with the intent to evade tax.
    - The Show Cause Notice did not make out any such specific allegation.
    - Mere non-disclosure or self-assessment gaps under Rule 7 of the Service Tax Rules could not invoke the extended period unless fraud or willful intent was established.
- **Corporate Guarantees – No Service Tax:** Referring to the SC judgment in *Edelweiss Financial Services Ltd.*, the Tribunal held that service tax cannot be levied on corporate guarantees in the absence of any consideration, either monetary or non-monetary.
- **Limited Confirmation:** The Tribunal upheld only a minuscule portion of the demand – ₹3,105 – under the legal services category for FY 2016–17, finding no error in the Commissioner's assessment for that specific instance.

Implications of the Ruling:

This judgment reinforces judicial checks on arbitrary invocation of extended limitation by tax authorities. It also reaffirms the Supreme Court's position on corporate guarantees and deliberate suppression under self-assessment regimes. For taxpayers, especially in the construction and infrastructure sector, the ruling provides clarity and relief from retrospective tax demands devoid of intent to evade.

Conclusion:

The *Wellworth Project Developers* ruling is a compelling reminder that procedural fairness and established jurisprudence are key to sustaining tax demands. The CESTAT's decision not only offers relief to the appellant but also sets a clear precedent in cases where demand is raised solely based on departmental investigations without corroborative evidence of suppression or fraud.

This Article has been written by Shri Ravi Shekhar Jha, Advocate Delhi High Court based on his interpretation of the law. He can be reached at his email id intelconsul@gmail.com or on his Mobile +91-9999005379.

Source: CESTAT Delhi

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Service Tax Appeal No. 50259 of 2024

(Arising out of Order-in-Original No. 23/RPS/COMMR./CGST/DSC/2023-24 dated 08.12.2023 passed by the Commissioner of Central Goods and Service Tax, New Delhi)

M/s. Wellworth Project Developers Private Limited ...Appellant
232-B, 4th Floor, Okhla Industrial Estate
Phase-III, New Delhi- 110020

Versus

Commissioner of CGST, ...Respondent
Delhi South Commissionerate, Plot-2B,
3rd Floor, EIL Annexe, Bhikaji Cama Place,
New Delhi-110066

APPEARANCE:

Shri Shaubhik Gupta, Advocate for the Appellant
Ms. Jaya Kumari, Authorized Representative for the Department

CORAM: HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P. V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 21.10.2024
Date of Decision: 10.01.2025

FINAL ORDER NO. 50031/2025

JUSTICE DILIP GUPTA:

M/s. Wellworth Project Developers Pvt. Ltd[1] has filed this appeal for setting aside the order dated 08.12.2023 passed by the Commissioner confirming the demand of service tax with interest and penalty by invoking the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act, 1994[2].

2. The appellant is engaged in providing construction of commercial or industrial building services. It claims to have

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1. the appellant
2. the Finance Act

discharged service tax on this service. It is also in receipt of legal and professional services, and works contract service which are chargeable to service tax under reverse charge mechanism. The appellant claims that it discharged service tax liability on the advance receipts on account of construction services and on legal services under reverse charge mechanism. During the period 2013-14 to 2017-18, the appellant also gave corporate guarantees to various banks for credit facility sanctioned to associated enterprises.

3. A show cause notice dated 11.10.2019 was served upon the appellant demanding service tax of Rs. 2,40,96,546/- with the following breakup:

Nature of service	**Differential amount of short payment**
Legal Services	16936
Corporate Gusrantee	5131512
Advances From Customers [Excluding Tax Already Paid On Commercial Construction & Work Contract] (20551178-1601597)	18948098
Total	**24,096,546**

4. The show cause also invoked the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act and the relevant portion of the show cause notice relating to this issue is reproduced below:

> "(ii) **M/s Wellworth Project Developers Private Limited,** 232-B, 4th Floor, Okhla Industrial Estate, Phase-III, New Delhi **have suppressed the entire value of taxable services provide by them. They have not shown the proper value of taxable services in their ST-3 returns filed by them through ACES system. They never disclosed the**

> **said facts to the department, which has resulted into short payment of service tax. Thus, by not disclosing the entire facts to the Department, the said short payment of service tax collectively amounting to Rs. 2,40,96,546/-** (including Education Cess, Secondary Higher Education Cess, Swachh Bharat Cess and Krishi Kalyan Cess) **has escaped the assessment for appropriate Service Tax liability, resulting into contravention of various provisions of the said Act and the said Rules by the Assessee with intent to evade payment of Service Tax. Non-disclosing of entire facts is prima facie suppression of facts with intention to evade payment of tax on their part. Had investigation not been conducted by the officers of Central Tax, the detection of short payment of service tax conectively amounting to Rs. 2,40,96,546/- and interest leviable thereon would have been gone un-noticed thereby causing a huge revenue loss to the exchequer.** Thus, the proviso to Section 73(1) of the Act ibid is invokable in this case for effecting recovery of said short payment/non-payment of service tax along with interest. By their above said acts of Omission and Commission, M/s Wellworth Project Developers Private Limited have also rendered themselves liable to penalty under section 76 and 78 of the Finance Act, 1994 for the contraventions mentioned above."
>
> **(emphasis supplied)**

5. The appellant filed a detailed reply to the show cause notice contending that not only the demand was not sustainable on merits, but also that the extended period of limitation could not have been invoked in the facts and circumstances of the case. The relevant portion of the reply submitted by the appellant, as has been noticed in the impugned order, is reproduced below:

> "A.5 **It is submitted that Noticee never had any mala-fide intention as it never made any hurdles when investigation was being conducted by the**

department. Whenever any document was asked by the investigation team, it was timely presented by the Noticee. Had it been the intention of Noticee to suppress any fact(s) or evade payment of tax, then it would not have submitted the documents/information for the purpose of carrying out investigation or presented with wrong data.

A.6 **Further, nowhere in the impugned SCN it has been mentioned that Noticee did not co-operate during the course of investigation.** If a holistic consideration and analysis be taken of the facts and circumstances, then Ld. Adjudicating Authority will not find any justification for invocation of the extended period of limitation under the proviso to Section 73(1) of the Act.

A.7 **The Authorized persons of the Noticee vide their letter dated 22 January 2019 submitted the documents and details called for by the department. Had the Noticee, not given any documents as demanded by the officer in charge, on time, then it could have been interpreted that Noticee is trying to suppress any facts, which might have caused delay in investigation proceedings as well.**

A.8 **Therefore, it is submitted that invocation of the extended period of limitation is unsustainable since the complete and relevant facts with regard to the transactions in issue were available with the Department and were within its knowledge and there is no question of willful suppression, fraud or intent to evade payment of service tax.**

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A.10 xxxxxxxxxxx

No concrete allegation has been made in the impugned SCN to prove that any mala-fide intention to suppress the facts or evade payment of tax exists.

A.11 Furthermore, it is a well-established proposition that onus to prove suppression or mala-fide intention or

> intention to evade payment of tax exists owing to which extended period of limitation has been invoked, lies upon the department. Reliance in this regard has been made on the following judicial pronouncements."
>
> **(emphasis supplied)**

6. The Commissioner, however, did not accept the contention raised by the appellant regarding the invocation of the extended period of limitation and the relevant finding recorded by the Commissioner is reproduced below:

> "32.3 Since the impugned demand notice is the outcome of the investigations conducted by the Department; is not issued on the basis of the statutory returns filed by the Noticee so as to attract the period of one year in issuing the show cause notice. **Secondly, a show cause notice can be issued within five years from the relevant date, if the escapement of assessment or under assessment of the Service Tax was due to omission or failure on the part of the Assessee to disclose wholly and truly all material facts required for verification of the self-assessment under Section 70 of the Act ibid.**
>
> 32.4 I find that in terms of Section 67 & Section 70 of the Finance Act, 1994 read with Rule 7 of Service Tax Rules, 1994, the Noticee was required to self-assess the tax due on services provided by them by reflecting the entire income against services in the ST-3 Returns and to furnish Return in prescribed manner/ form, which they did not do. **The Tax Department placed trust on the assessee for the purpose of self assessing their Service Tax liability on the taxable services provided and when the law places obligations on the service provider, non-compliance of the same by not filing returns or by filing improper returns and thereby not disclosing the actual value of services provided, amounts to intentional suppression of facts.** It is on record that the Noticee has received Advances and given Corporate

Bank Guarantee which are taxable services but has not paid service tax thereon and also, short paid service tax liability of Legal Services under Reverse Charge Mechanism, even though they did not bother to self assess and deposit the due Service Tax in the Government Exchequer properly within specified time/ manner. **I find that, the evasion of Service Tax referred in the SCN would have not come to light and continued unabated if investigations were not carried out by the authorities.**

32.5 In the instant case, the information regarding the element of short-payment of Service Tax has genesis only after the investigations of the records of the noticee by the Department and without which the short payment of Service Tax could not have been detected. **I find that such acts of the noticee can be considered as acts performed with malafide intention to evade payment of Service Tax appropriately and timely. Hence, such acts are squarely covered under the elements of deliberate suppression of facts with intent to evade payment of Service Tax as stated under proviso to Section 73 (1) supra.**

32.6 **The suppression of facts clearly leads to the conclusion that the Noticee had intention to evade tax.** This finds support from the ratio of the judgment and order delivered in the matter of Dugal Tetenal India Ltd. Vs. C.C.E reported in 2002 (147) E.L.T 578 (Tri.-Del.), wherein the Hon'ble Tribunal particularly mentioned that there was no evidence on record to show that the material fact relating to ownership of the brand name was known to the Department till their investigative results were available. In a Service Tax case, the Hon'ble Tribunal, in the matter of Insurance and Provident Fund Department Vs. C.C.E reported in 2006 (2) S.T.R 369 (Tri.-Del.), negated the contentions of the appellants that they, being a Government organization, had no intention to evade payment of duty and therefore, there was no mis-statement or suppression of facts so as to attract a longer period for confirming the

demand; and that the extended period for demand could only be applied when some positive signals other than mere inaction or failure on the part of the Party were proved.

32.7 **Further, the intention to evade Service Tax is not required to be proved with mathematical precision in the regime of self-assessment, especially when the assessee itself makes the assessment.** In fact, I find that it is the bounden duty of the assessee to disclose all the facts before the department. Any deviation from this would tantamount to intent to evade payment of tax, because it was not possible for the Department to find out the short payment/ non-payment, when no detail of such fact was disclosed before them despite request.

32.8 **Accordingly, I hold that the extended period of limitation is applicable in terms of proviso to Section 73(1) of the Act read with Section 174(2) of the CGST Act, 2017.**"

(emphasis supplied)

7. A summary of the demand confirmed by the impugned order dated 08.12.2023 is reproduced below:

Nature of service	**Period**	**Taxable value (in Rs.)**	**Rate of Service Tax**	**Total Service Tax payable (in Rs.)**
Legal Service-Receiver	**2013-14**	88,484	12.36%	10,937
	2014-15	45,506	12.36%	5,625
	2015-16	66,410	14.50%	9,629
	2016-17	20,700	15.00%	3,105
	2017-18	0	15.00%	0
Total		**2,21,100**		**29,296**
Advances received from customers	**2013-14**	**16,54,65,147**	**12.36%**	**2,04,51,495**
	2014-15		12.36%	0
	2015-16	6,87,470	14.50%	99,683
	2016-17		15.00%	0
	2017-18	0	15.00%	0
Total		**16,61,52,617**		**2,05,51,178**
Corporate Guarantee	**2013-14**	**1,60,31,648**	**12.36%**	**19,81,512**
	2014-15		12.36%	0

	2015-16		14.50%	0
	2016-17		15.00%	0
	2017-18	**2,10,00,000**	**15.00%**	**31,50,000**
Total		**3,70,31,648**		**51,31,512**
Grand Total		**20,34,05,365**		**2,57,11,986**

8. The differential amount of short payment is as follows:

Nature of service	**Differential amount of short payment**
Legal Services	16,936
Corporate Guarantee	51,31,512
Advance from Customer [excluding tax already paid on Commercial Construction & Work Contract] (2,05,51,178 - 16,01,597)	1,89,48,098
Total	**2,40,96,546**

9. Shri Shaubhik Gupta, learned counsel for the appellant made the following submissions:

(i) The service tax demand of Rs. 2,24,43,944 out of the total disputed demand of Rs. 2,40,96,546, as confirmed in the impugned order, pertains to the financial year 2013-14. This demand is time-barred as it exceeds even the extended period of five-year limitation period stipulated under section 73(1) of the Finance Act. The five years period expired on 25.10.2018 and on 25.04.2019 for the respective half yearly periods of the Financial Year 2013-14;

(ii) Even the extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act could not have been invoked;

(iii) The service tax on corporate guarantees could not have been confirmed in view of the decision of the Supreme Court in **Commissioner of CGST and**

Central Excise vs. **M/s. Edelweiss Financial Services Ltd**[3];

(iv) The demand of service tax on advances received from customers has been erroneously calculated on the closing balance of advance received; and

(v) The demand of service tax on legal and professional services is not justified as the demand is towards the services of Chartered Accountant and on legal services from advocates. No liability under reverse charge mechanism can be confirmed for services received from Chartered Accountant as service tax had been collected from them under reverse charge. In regard to legal and professional expenses, service tax was paid, but the Commissioner has mistakenly confirmed the liability under reverse charge basis, assuming that the expenses pertained solely to legal services though the appellant provided the breakdown.

10. Ms. Jaya Kumari, learned authorized representative appearing for the department, however, supported the impugned order and made the following submissions:

(i) The extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act was correctly invoked; and

(ii) The Commissioner committed no illegality in confirming the demand of service tax with interest and penalty.

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3. (2023) 112 G.S.T.R. 14 (S.C.)

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

12. The first issue that arises for consideration is whether the demand confirmed for the Financial Year 2013-14 is beyond the period of 5 years so as to be time barred.

13. In this connection, it would be appropriate to first reproduce the provisions of section 73(1) of the Finance Act, as they stood at the relevant time, and 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 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,
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> 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."

14. It needs to be noted that out of the total confirmed demand of Rs. 2,40,96,546/-, the demand of Rs. 2,24,43,944/- is with respect to the Financial Year 2013-14. For the respective half yearly periods for the Financial Year 2013-14, the period of five years would expire on 25.10.2018 and 25.04.2019. The show cause notice that was issued on 11.10.2019 was clearly beyond the period of five years. The following chart would explain this:

Period	**Due date of filing return**	**Date up to which show cause could be served invoking extended period of limitation of five years under proviso to section 73(1) of the Act**	**Date of issue of the show cause notice**	**Remarks**
Apr 13 to Sep 13	25-Oct-2013	24-Apr-2018	11-Oct-2019	Time-Barred
Oct 13 to Mar 14	25-Apr-2014	24-Apr-2019	11-Oct-2019	Time-Barred

15. The service tax demand of Rs. 2,24,43,944/- is clearly barred by limitation and, therefore, could not have been confirmed.

16. For the same reason, the demand of interest and penalty for the amount of service tax confirmed for the Financial Year 2013-14 is beyond the period of limitation.

17. The next issue that would arise for consideration is whether the extended period of limitation upto five years beyond the normal period of thirty months could have been invoked in the facts and circumstances of the case.

18. In this connection, it is noticed that after excluding the service tax liability confirmed for the period 2013-14, only the service tax

liability for the periods 2016-17 and 2017-18 would be within the normal period of limitation.

19. From the chart contained in paragraph 7 of this order, the total demand of service tax confirmed for the normal period towards legal services would be Rs. 3,105/- only.

20. In so far as the advances received from customers is concerned, it would be seen from the chart contained in paragraph 7 of this order that no amount of service tax has been confirmed for the normal period.

21. In so far as the corporate guarantees is concerned, it would be seen that an amount of Rs. 31,50,000/- is the amount that has been confirmed towards service tax liability for the normal period.

22. The show cause notice, while invoking the extended period of limitation, merely mentions that as the appellant has not shown the proper value of taxable service in the returns that were filed, the appellant has contravened the provisions of the Finance Act with intent to evade payment of service tax. In the reply to the show cause notice the appellant stated that it had cooperated in the investigation conducted by the department and in fact had provided all the documents required by the department in its letter dated 22.01.2019. Thus, the appellant had not suppressed facts, much less with an intent to evade payment of service. The appellant also pointed out that specific allegations had not been made in the show cause notice regarding any mala fide intention in suppressing facts. The Commissioner has observed in the order that a show cause notice can be issued within five years from the relevant date "if the escapement

of assessment or under assessment of the service tax was due to omission or failure on the part of the assessee to disclose wholly and truly all material facts required for verification of the self-assessment under section 70 of the Act ibid". The Commissioner, further observed that the department places trust on an assessee under the self-assessment scheme and, therefore, filing improper returns and not disclosing the actual value of services provided, would amount to intentional suppression of facts. The Commissioner also noted that evasion of service tax would not have come to the knowledge of the department if investigation had not been carried out and, therefore, the appellant acted with mala fide intention to evade payment of service tax. The Commissioner ultimately concluded that suppression of facts clearly leads to the conclusion that the appellant had intention to evade tax.

23. It has to be remembered that mere suppression of facts is not enough. There has to be a deliberate attempt to evade payment of excise duty. The show cause notice must specifically deal with this aspect and the adjudicating authority is also obliged to examine this aspect in the light of the facts stated by the assessee in reply to the show cause notice.

24. The provisions of section 11A (4) of the Central Excise Act, which are pari materia to the provisions of section 73(1) of the Finance Act, came up for interpretation before the Supreme Court in **Pushpam Pharmaceuticals Company** vs. **Collector of Central Excise, Bombay**[4]. The Supreme Court observed that section 11A(4) empowers the Department to reopen the proceedings if levy has been

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4. 1995 (78) E.L.T. 401 (S.C.)

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. It is in this context that the Supreme Court observed that the act must be deliberate to escape payment of duty. The relevant observations are:

> "2. ****** The Department invoked extended period of limitation of five years as according to it the duty was shortlevied due to suppression of the fact that if the turnover was clubbed then it exceeded Rupees Five lakhs.
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> ********
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> 4. A perusal of the proviso indicates that it has been used in company of such strong works as fraud, collusion or willful 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."
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> **(emphasis supplied)**

25. This decision of the Supreme Court in **Pushpam Pharmaceuticals** was followed by the Supreme Court in **Anand Nishikawa Co. Ltd.** vs. **Commissioner of Central Excise, Meerut**[5] and the relevant paragraph is as follows:-

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5. (2005) 7 SCC 749

> "27. Relying on the aforesaid observations of this Court in the case of **Pushpam Pharmaceuticals Co. v. CCE 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 and not that he must have done, would not render it suppression. It is settled law that mere failure to declare does not amount to wilful suppression. **There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made hereinabove 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 the proviso to Section 11-A of the Act.** We are, therefore, of the firm opinion that where facts were known to both the parties, as in the instant case, it was 7 (2005) 7 SCC 749 11 E/52953/2018 not open to CEGAT to come to a conclusion that the appellant was guilty of "suppression of facts."
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> **(emphasis supplied)**

26. In **Easland Combines, Coimbatore** vs. **Collector of Central Excise, Coimbatore**[6] the Supreme Court observed that for invoking the extended period of limitation, duty should not have been paid because of fraud, collusion, wilful statement, suppression of fact or contravention of any provision. These ingredients postulate a positive act and, therefore, mere failure to pay duty which is not due to fraud, collusion or wilful misstatement or suppression of facts is not sufficient to attract the extended period of limitation.

27. The aforesaid decisions of the Supreme Court were relied upon

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6. 22. (2003) 3 SCC 410

by the Supreme Court in **Uniworth Textiles Ltd.** vs. **Commissioner of Central Excise, Raipur**[7] and the relevant portion of the judgment is reproduced below:

> "12. We have heard both sides, Mr. R.P. Batt, learned senior counsel, appearing on behalf of the appellant, and Mr. Mukul Gupta, learned senior counsel appearing on behalf of the Revenue. We are not convinced by the reasoning of the Tribunal. **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 nonpayment 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 wilful 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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> **(emphasis supplied)**

28. The Supreme Court in **Continental Foundation Joint Venture** vs. **Commissioner of Central Excise, Chandigarh**[8] also observed in connection with section 11A(4) of the Excise Act, that suppression means failure to disclose full information with intention to evade payment of duty and the observations are as follows:-

> "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**

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7. 2013 (288) E.L.T. 161 (S.C.)
8. 2007 (216) E.L.T. 177 (S.C.)

> **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 11A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a wilful misstatement. The latter implies making of an incorrect statement with knowledge that the statement was not correct."
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> **(emphasis supplied)**

29. It is, therefore, clear that the suppression of facts should be deliberate and in taxation laws it can have only one meaning, namely that the correct information was not disclosed deliberately to escape payment of duty.

30. In **M/s. Raydean Industries** vs. **Commissioner CGST, Jaipur[9],** the Tribunal in connection with the extended period of limitation, observed that even in the case of self assessment, the department can always call upon an assessee and seek information and it is the duty of the proper officer to scrutinize the correctness of the duty assessed by the assessee. The Division Bench also noted that departmental instructions issued to officers also emphasise that it is the duty of the officers to scrutinize the returns. The relevant portion of the decision is reproduced below:

> "24. **It would be seen that the ER-III/ER-I returns filed by the applicant clearly show that the applicant had categorically declared that it had cleared the final products by availing the**

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9. Excise Appeal No. 52480 of 2019 decided on 19.12.2022

exemption under the notification dated 17.03.2012. The applicant had furnished the returns on the basis of self assessment. Even in a case of self assessment, the Department can always call upon an assessee and seek information. It is under sub-rule (1) of rule 6 of the Central Excise Rules, 20028 that the assessee is expected to self assess the duty and sub-rule (3) of rule 12 of the 2002 Rules provides that the proper officer may, on the basis of information contained in the return filed by the assessee under sub-rule (1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee. Sub-rule (4) of rule 12 also provides that every assessee shall make available to the proper officer all the documents and records for verification as and when required by such officer. **Hence, it was the duty of the proper officer to have scrutinized the correctness of the duty assessed by the assessee and if necessary call for such records and documents from the assessee, but that was not done. It is, therefore, not possible to accept the contention of the learned authorized representative appearing for the Department that the appellant should have filed a proper assessment return under rule 6 of the Rules.**

25. **Departmental instructions to officers also emphasise upon the duty of officers to scrutinize the returns.** The instructions issued by the Central Board of Excise & Customs on December 24, 2008 deal with "duties, functions and responsibilities of Range Officers and Sector Officers". It has a table enumerating the duties, functions and responsibilities and the relevant portion of the table is reproduced below:

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26. The Central Excise Manual published by CBEC on May 17, 2005, which is available on the website of CBEC, devotes Part VI to SCRUTINY OF ASSESSMENT.

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27. **It is thus evident that not only do the 2002 Rules mandate officers to scrutinise the Returns to verify the correctness of self assessment and empower the officers to call for documents and records for the purpose, Instructions issued by the department also specifically require officers at various levels to do so.**"

(emphasis supplied)

31. In **Commissioner of C. Ex. & Customs** vs. **Reliance Industries Ltd.**[10], the Supreme Court held that if an assessee bonafide believes that it was correctly discharging duty, then merely because the belief is ultimately found to be wrong by a judgment would not render such a belief of the assessee to be malafide. If a dispute relates to interpretation of legal provisions, it would be totally unjustified to invoke the extended period of limitation. The Supreme Court further held that in any scheme of self-assessment, it the responsibility of the assessee to determine the liability correctly and this determination is required to be made on the basis of his own judgment and in a bonafide manner. The relevant portion of the judgment is reproduced below:

"23. **We are in full agreement with the finding of the Tribunal that during the period in dispute it was holding a bona fide belief that it was correctly discharging its duty liability. The mere fact that the belief was ultimately found to be wrong by the judgment of this Court does not render such belief of the assessee a mala fide belief particularly when such a belief was emanating from the view taken by a Division Bench of Tribunal. We note that the issue of valuation involved in this particular matter is**

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> **indeed one were two plausible views could co-exist. In such cases of disputes of interpretation of legal provisions, it would be totally unjustified to invoke the extended period of limitation by considering the assessee's view to be lacking bona fides. In any scheme of self-assessment it becomes the responsibility of the assessee to determine his liability of duty correctly. This determination is required to be made on the basis of his own judgment and in a bona fide manner.**
>
> **24. The extent of disclosure that an assessee makes is also linked to his belief as to the requirements of law.** xxxxxxxxxxx. On the question of disclosure of facts, as we have already noticed above the assessee had disclosed to the department its pricing policy by giving separate letters. It is also not disputed that the returns which were required to be filed were indeed filed. In these returns, as we noticed earlier there was no separate column for disclosing details of the deemed export clearances. Separate disclosures were required to be made only for exports under bond and not for deemed exports, which are a class of domestic clearances, entitled to certain benefits available otherwise on exports. **There was therefore nothing wrong with the assessee's action of including the value of deemed exports within the value of domestic clearances."**
>
> **(emphasis supplied)**

32. In the present case, as noticed above, the show cause notice merely alleges that as the appellant did not disclose proper value of taxable services in the ST-3 returns, payment of service tax amounting to Rs. 2,40,96,546/- escaped assessment resulting in contravention of various provision of the Finance Act and the Rules with intention to evade payment of service tax. Mere suppression of facts is not enough to invoke the extended period of limitation

contemplated under the proviso to section 73(1) of the Finance Act. The suppression has to be with an intent to evade payment of service tax and for this purpose the show cause notice must specifically allege why the asseessee has suppressed facts with intent to evade payment of service tax. The Commissioner merely observed that show cause notice can be issued within five years from the relevant date if assessment was due to omission of failure on the part of an assessment to disclose wholly and truly all material facts required for verification of the self-assessment. The Commissioner completely mis-read the proviso to section 73(1) of the Finance Act. Though the normal period for issue of a show cause notice at the relevant time was thirty months, the extended period of limitation upto five years could have been invoked only if there was suppression of facts with a clear intention to evade payment of service tax. Mere suppression of facts would not result in invocation of the extended period of limitation.

33. Even under the self-assessment scheme, the Tribunal has repeatedly held that the proper officer can always seek information from the asseessee and it is the duty of the proper officer to scrutinize the correctness of the duty assessed by the asseessee. The department cannot invoke the extended period of limitation merely because the returns were self-assessed. The Commissioner fell in error in holding that the extended period of limitation can be invoked if facts come to the notice of the department during investigation since the proper officer could have ascertained the facts. The Commissioner also fell in error in holding that "suppression of facts

clearly leads to the conclusion that the Noticee had intention to evade tax". This finding is clearly contrary to the decisions to the Supreme Court and the High Courts referred to above.

34. The extended period of limitation contemplated under the proviso to section 73(1) of the Finance Act, therefore, could not have been invoked in the facts and circumstances of the case.

35. As noticed above, the only demand of service tax falling within the normal period of limitation is the service tax demand on legal services amounting to Rs. 3,105/- for the period 2016-17 and an amount of Rs. 31,50,000/- towards corporate guarantees for the financial year 2017-18.

36. In so far as the service tax demand on corporate guarantees is concerned, reliance can be placed on the decision of the Supreme Court in **Edelweiss Financial Services**. The Supreme Court held that service tax would not be leviable as there is no flow of consideration. The relevant portion of the decision of Supreme Court is reproduced below:

> "4. Responding to the above, Mr. Bharat Rai Chandani, learned counsel for the assessee on caveat would read Section 65 (12) of the Finance Act, 1994 to point out **that issuance of corporate guarantee to a group company without consideration would not fall within banking and other financial services and is therefore not taxable service. He would also read Section 65B (44) of the Finance Act 1994 to point out that the definition of service would indicate that it relates to only such service which is rendered for valuable consideration.**
>
> 5. The counsel would next advert to paragraph 3.1.12 of the Commissioner's order where the following was recorded:-

> "further, the consideration can be of two types viz., monetary consideration and non monetary consideration. In the present case, the Assessee has argued that they have not received any consideration. In such case it's for the department to prove that the Assessee's claim is wrong. **It is observed that nowhere in the Show Cause Notice, attempt has been made to prove that the Assessee received either monetary or non-monetary consideration in any form. It is not alleged or proved in the Show Cause Notice** as to how the Assessee got any benefit from their subsidiaries in monetary or non-monetary terms for the Corporate Guarantees issued. Missing this vital point, valuation of the consideration using provisions of Section 67(1) of the Finance Act, 1994 become a futile exercise."

6. Mr. Rai Chandani then read paragraphs 8 and 9 of the judgment of the Tribunal, which are extracted below:-

> "8. The criticality of 'consideration' for determination of service, as defined in section 65B(44) of Finance Act, 1994, for the disputed period after introduction of 'negative list' regime of taxation has been rightly construed by the adjudicating authority. **Any activity must, for the purpose of taxability under Finance Act, 1994, not only, in relation to another, reveal a 'provider', but also the flow of 'consideration for rendering of the service. In the absence of any of these two elements, taxability under Section 66B of Finance Act, 1994 will not arise. It is clear that there is no consideration insofar as 'corporate guarantee' issued by respondent on behalf of their subsidiary companies is concerned.**

> 9. The reliance placed by Learned Authorised Representative on the 'non-monetary benefits' which may, if at all, be of relevance for determination of assessable value under section 67 of Finance Act, 1994 does not extend to ascertainment of 'service' as defined in section 65B(44) of Finance Act, 1994. 'Consideration' is the recompense for the 'contractual' undertaking that authorizes levy while
>
> 'assessable value' is a determination for computing the measure of the levy and the latter must follow the former."
>
> 7. **The above would suggest that this was a case where the assessee had not received any consideration while providing corporate guarantee to its group companies. No effort was made on behalf of the Revenue to assail the above finding or to demonstrate that issuance of corporate guarantee to group companies without consideration would be a taxable service.** In these circumstances, in view of such conclusive finding of both forums, we see no reason to admit this case basing upon the pending Civil Appeal No. 428, @ Diary No.42703/2019, particularly when it has not been demonstrated that the factual matrix of the pending case is identical to the present one."
>
> **(emphasis supplied)**

37. In view of the aforesaid decision of the Supreme Court rendered in **Edelweiss Financial Services**, the confirmation of demand of service tax under corporate guarantees for the Financial Year 2017-18 cannot be sustained. The confirmation of demand of corporate guaranties for the Financial Year 2013-14 has been found to be beyond five years and, therefore, barred by limitation.

38. In this view of the matter, the only demand that could have

been confirmed for the normal period for 2013-14 is Rs. 3,105/- for legal services. Learned counsel for the appellant has not been able to point out any error in the order of the Commissioner confirming this demand.

39. Thus, for the reasons stated above, the order dated 08.12.2023 passed by the Commissioner is sustained only to the extent that it upholds the confirmation of demand towards service tax of Rs. 3,105/- with penalty and interest under the legal services head for the period 2016-17. The rest of the demand that has been confirmed with penalty and interest is set aside. The appeal is, accordingly, allowed to this extent.

(Order pronounced on **10.01.2025**)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P. V. SUBBA RAO)
MEMBER (TECHNICAL)

JB