**(2024) 10 CESTAT CK 1204**

**In the Customs, Excise And Service Tax Appellate, New Delhi**

**Case No :** Service Tax Appeal No. 59839 of 2013, Service Tax Miscellaneous Application No. 50334 of 2024

**Selvel Media Services Private Limited @APPELLANT @Hash Commissioner of Central Excise, Delhi-III @RESPONDENT**

**Date of Decision :** 24-10-2024

**Acts Referred:**

Finance Act, 1994 — Section 65(3), 65(105)(e), 68, 73, 75, 76, 77, 78
Service Tax Credit Rules, 2002 — Rule 3, 3(4)

**Citation :** (2024) 10 CESTAT CK 1204

**Hon'ble Judges :** Binu Tamta, Member (J);Hemambika R. Priya, Member (T)

**Bench :** Division Bench

**Advocate :** Priyamwada Sinha, Drishty Sakhuja, Manoj Kumar

**Final Decision :** Allowed

## Judgement

Hemambika R. Priya, J

1. The present appeal has been filed by M/s Selvel Media Services Private Limited (hereinafter referred to as the appellant) against the Order-in-Original No. 28-29/SA/CCE/ST/2013 dated 18.07.2013 whereby the Commissioner has confirmed the demand of Rs. 56,12,124/- along with interest and equal penalty.

2. The brief facts of the case are that the appellant is registered with Service Tax for providing services related to the 'Advertising agency's services' as defined under Section 65(3) and is a taxable service under Section 65(105)(e) of the Finance Act, 1994. Information was gathered that the appellant was not correctly declaring the amount which was being shown as 'exempted services', other than export, in the periodical ST-3 returns for the period 2006-07 and 2007-08. On enquiry, the department noted that during the said period, the appellant had included the total amount of 'Publicity charges' received from intermediary agencies under the category of exempted services' in the ST-3 returns, as per Trade Notice No. 47-CE(Misc-47)/96 dated 14.11.2006 issued by Central Excise Commissionerate, New Delhi. The total amount of 'Publicity charges' received from Intermediary Agencies by the appellant appeared to be liable to be included

in the gross amount received by them and leviable to Service Tax. The Department alleged that the appellant had not included the total amount of 'Publicity charges' of Rs. 4,55,91,458/- received from the Intermediary Agencies during the period 2006-07 and 2007-08 in the gross value received on which the appellant had not paid service tax amounting to Rs.55,83,242/-. Accordingly, show cause notice dated 23.04.2009 was issued to the appellant demanding service tax of Rs. 55,83,242/- under Section 73 along with interest under Section 75 and alleging imposition of penalty under Section 76, 77 & 78 of the Finance Act, 1994. The Department further noted that for the subsequent period 2008-09, the appellant had not included the total amount of 'Publicity charges' of Rs.3,10,107/- received from the Intermediary Agencies in the gross value received on which the appellant has not paid service tax amounting to Rs.28,881/-. Accordingly, another show cause notice dated 09.10.2009 was issued to the appellant demanding service tax of Rs. 28,881/- under Section 73 along with interest under Section 75 and alleging imposition of penalty under Section 76, 77 & 78 of the Finance Act, 1994. The two show cause notices were adjudicated vide Order-in-Original No. 28-29/SA/CCE/ST/2013 dated 18.07.2013 wherein the adjudicating authority confirmed the demand of Rs. Rs.56,12,124/- under Section 73, interest under Section 75 and imposed Penalty Rs.20,000/- under Section 77 & Penalty Rs.56,12,124/- under Section 78 of the Finance Act, 1994. Aggrieved by the said order, the appellant is before this Tribunal.

3. Learned Counsel for the appellant submitted that the appellant used to lease hoarding sites from municipal authorities and sub-lease them to various advertising agencies. These advertising agencies would display advertisements of their clients on these hoarding sites. Against the sub-leasing of the hoarding sites, the appellant used to charge publicity charges to the advertising agencies. The learned counsel submitted that the service of ‘sale of space or time for advertisement’ was inserted under Section 65 (105) as sub-clause (zzzm) of the Finance Act on 01.05.2006. He further stated that the Department has erroneously held that the activity performed by Appellant falls under the category of 'advertising agency' service. This category of service falls under Section 65(105)(e) of the Finance Act. Since the definition of advertising agency service states that the service should be provided by an advertising agency, the appellant should also fall under the definition of advertising agency. An advertising agency is engaged in providing services connected with making, preparation, display or exhibition of advertisement. In the present case, the Appellant sub-leases hoarding sites to a third-party advertising agency. This advertising agency then makes, prepares, displays and exhibits the advertisement of their clients. There is no agreement or engagement between the client and the appellant. Accordingly, it is clear that the third-party advertising agencies fall under the afore-said definition and not the appellant who is merely sub-leasing the sites. In view of the aforementioned submissions, the activities performed by the appellant clearly falls under the category of 'sale of space or time for advertisement and not 'advertising agency' service. In

 

support of his submission, learned counsel relied upon the following decisions:-

• Vasantham Outdoor Advertising Pvt. Ltd. Appellant v. Commissioner of Central Excise, Madurai, 2018 SCC OnLine CESTAT 7948

• Chaya Lakshmi Creations Pvt. Ltd. v. Commissioner of Service Tax, 2017 SCC OnLine CESTAT 6348

• Zee Telefilms Ltd. v. Commissioner of C. Ex. (Appeals), Mumbai-IV, 2006 (4) S.T.R. 349 (Tri.Mumbai)

• Needwise Advertising Pvt. Ltd. vs. Commr. of Service Tax, Ahmedabad, 2011 (21) STR 229 (Tri.-Ahmd)

• Commissioner Of Central Excise, Ludhiana V. Azad Publications, 2006 (3) S.T.R. 249 (Tri. Del.)

• Rex Advertisers V. Commissioner of Service Tax, Bangalore, 2006 (2) S.T.R. 330 (Tri. - Bang.)

Learned counsel submitted that the appellant was engaged in 'sale of space or time for advertisements' which became a taxable service w.e.f. 01 May 2006. Learned counsel for the appellant relied upon the judgement of the Tribunal Mumbai Bench in the case of Zee Telefilms Limited vs. Commissioner of Central Excise (Appeals), Mumbai-IV, 2006 (4) STR 349 (Tri.-Mumbai). It is a well settled law that when a category of service is introduced from a certain date, then the service is not taxable for the period prior to the said date. In support of his submission, he relied upon the following case laws:-

• NCR Corporation India Pvt. Ltd. v. CST, Bangalore, 2008 (12) STR 68 (Tri-Bang.)

• Cameo Corporation Services Ltd. vs. Commissioner of Service Tax, Chennai, 2008 (11)S.T.R. 161 (Tri.-Chennai)

Accordingly, the learned counsel submitted that since the activities undertaken by the appellant fell under the category of 'sale of space or time for advertisement' which was introduced w.e.f. 01 May 2006, no Service tax liability would arise on the invoices issued by the Appellant prior to 01 May 2006.

3.2 Learned counsel further stated that it is a well settled legal principle that when a show cause notice has alleged that an assessee is engaged in providing a specific category of service, then demand of Service tax cannot be made with respect to any other category of service. Accordingly, no demand for service tax can be made with respect to provision of the service of 'sale of space or time for advertisement' as the same was not alleged in the SCN. In this regard, learned counsel relied upon the following judgments: -

• Commissioner of Central Excise & Customs, Belgaum v. Mahakoshal Beverages Pvt. Ltd., 2014 (33) S.T.R. 616 (Kar.)

• Sainik Mining & Allied Services Pvt. Ltd. v. Commissioner of S.T., Delhi, 2019

 

(28) G.S.T.L. 156 (Tri.- Del)

3.3 Learned counsel further contended that the impugned order and the show cause notice were erroneously issued by invoking the extended period of limitation by alleging that the appellant wilfully suppressed facts regarding receipt of publicity charges for sub-leasing of hoarding sites. He contended that the Department had previously issued notice to the appellant and has adjudicated on the same issue of liability of service tax on receipt of publicity charges for the period of FY. 1999 to 2006. In fact, the appellant had received a favourable order from the Adjudicating Authority with respect to the similar activities undertaken by the appellant. It is a settled law that when show cause notice are issued on same issue previously, then subsequent show cause notices cannot invoke the extended period of limitation. In support of his submissions, he relied upon the following case laws:-

• Caprihans India Ltd. v. Commissioner Of Central Excise, Surat, 2015 (324) E.L.T. 8 (S.C.)

• Nizam Sugar Factory v. Collector Of Central Excise, A.P., 2008 (9) S.T.R. 314 (S.C.)

Further, the learned counsel stated that the consideration received by the appellant were with respect to invoices raised prior to 01 May 2006, when the appellant was not liable to charge Service tax. Thus, the Appellant was not liable to discharge Service tax in respect of the said amount. Accordingly, he submitted that the appellant did not contravene Section 68 of the Finance Act.

3.4 As regards to penalty under Section 77 and Section 78 of the Finance Act, learned counsel for the appellant submitted that the appellant was not liable to discharge service tax on the receipt of consideration for sub-leasing of hoarding sites for the period prior to May 2006. Thus, as the demand is not sustainable, the question of penalty does not arise. In support, he relied upon the following decisions:-

• Pacific Harish Industries Limited v. Commissioner of Central Excise & ST, 2019 SCC OnLine CESTAT 6533

• Commissioner of C. Ex., Aurangabad v. Balakrishna Industries,, 2006 (201) ?.?.?. 325 (S.C.)

4. Learned Authorized Representative appearing for the Department reiterated the findings in the impugned order and submitted that the classification of services provided by the appellant has not been disputed by the appellant either in the reply to show cause notice or in their written submission fled before the Adjudicating Authority. In reply to show cause notice No. 1, the appellant has contended that the liability to pay service tax is on the main contractor, therefore a sub-contractor is not liable to pay service tax; that till May-2006, they have not charged service tax on the bills raised to the main contractor that they have started paying service tax from May-2006 onwards. The appellant had accepted

 

the liability towards payment of service tax from May-2006 onwards, whereas on the other hand, they are contesting that service tax liability in respect of said services provided by them prior to May-2006 for which payment is received after May-2006. The issue with regard to payment of service tax by a sub-contractor has been clarified by the Board vide Circular No. 96/7/2007-ST dated 23.08.2007 and has been decided in favour of Revenue by the Larger Bench of Hon'ble CESTAT, Delhi in case of Commissioner of ST, New Delhi Vs. Melange Developers P Ltd. (2019-TOL-1684-CESTAT-DEL-LB).

4.1 As regards to invocation of extended period of limitation, learned Authorized Representative submitted that the appellant was aware of the taxability of the services provided by them and were discharging service tax from May-2006 onwards. The appellant is intentionally, wilfully, deliberately included the inadmissible amount of "Publicity Charges' received from "Intermediary Agencies" under the category of 'exempted services' in ST-3 returns with an intent to evade payment of Service Tax. Hence, extended period has rightly been invoked. In the light of above, he prayed that the appeal may be dismissed.

5. We have heard the learned Counsel for the appellant and Ld AR for the department. The issue for our consideration is whether the amount received as 'Publicity charges' from intermediary agencies is liable to be taxed as Advertising Agency services. In order to appreciate the issue, we would need to refer to the definition of advertising agency service which is reproduced below:

"65(3) "advertising agency" means any commercial concern engaged in providing any service connected with the making, preparation, display or exhibition of advertisement and includes an advertising consultant"

The definition of the taxable service is reproduced below:

"65(105) "taxable service" means any service provided or to be provided.-

...(e) to a client, by an advertising agency in relation to advertisement, in any manner,………………………………………….."

5.1 We note that the appellant is registered for providing services related to Advertising agency services, and was paying service tax on their activity, and filing their ST-3 returns regularly. The said disputed amount was received as publicity charges from their Intermediary agencies. The appellant claim the same to be exempted as they were exempted as per the Trade Notice dated 14.11.1996, wherein it was clarified that the sub-contractor was not liable to pay service tax, if the main contractor had paid the tax. The Ld Counsel has submitted that the appellant was engaged in providing advertising agency service to its clients, and the intermediary agencies. He stated that where the billing is done on the intermediary agencies, no service tax was charged, since the liability of tax was on the intermediary agency. This is an issue related to liability of service tax in a scenario where there is a main contractor & a sub-contractor. We note that this issue relating to the liability of the sub-contractor to pay service tax stands decided by the Larger Bench decision in the case of Commissioner of Service Tax, New Delhi vs Melange Developers P. Ltd. [2019-TOL-1684-CESTAT-DEL-LB]. The relevant extracts of the decision is reproduced hereinafter:

"11. In the face of these provisions, it may not be open to a sub-contractor to contend that he should not be subjected to discharge the Service Tax liability in respect of a taxable service when the main contractor has paid Service Tax on the gross amount, more particularly when there is no provision granting exemption to him from payment of Service Tax.

12. It is true that prior to 2007, various Service Tax, Trade Notices/Instructions/ Circulars/ Communications had been issued exempting certain category of persons from payment of Service Tax. A sub-contracting Customs House Agent was exempted from payment of Service Tax on the bills raised on the main Customs House Agent. When an architect or interior decorator sub-contracted part/whole of its work to another architect or interior decorator, then no Service Tax was required to be paid by the sub-contractor, provided the principal architect or interior decorator had paid the Service Tax. However, all these Trade Notices/Instructions/ Circulars/Communications were superseded by the Master Circular dated 23 August, 2007 issued by the Government of India, Ministry of Finance. The Circular noticed that when Service Tax was introduced in the year 1994 there were only three taxable services, but later 100 services had been specified as taxable services and that since the introduction of Service Tax, number of clarifications had been issued, but it had become necessary to take a comprehensive review of all the clarifications keeping in view the changes that had been made in the statutory provisions, judicial pronouncements and other relevant factors. The relevant portion of the Master Circular, in so far as it relates to sub-contractors, is reproduced below:

999.03 / 23.08.07

A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as sub-contractor who undertakes only part of the whole work.

A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the subcontractor. Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a sub-contractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service provided.

13. The Master Circular clarifies that the services provided by sub-contractors are in the nature of input services and since a sub-contractor is a essentially taxable service provider, Service Tax would be leviable on the taxable services provided. It has also been clarified that even if a taxable service is intended for use as an input service by another service provider, it would still continue to be a taxable service.

14. It can be used that if a main contractor has paid Service Tax on the entire amount of the main contract out of which a portion has been given to a sub-contractor, then if a sub-contractor is required to pay Service Tax, it may amount to 'Double Taxation', but this issue has to be examined in the light of the credit mechanism earlier introduced through Service Tax Credit Rules, 2002 granting benefit of tax paid on input services if the input services and the output services fell under the same taxable services and the subsequent amendment made on 14 May, 2003 granting benefit of tax paid on input services even if the input service and the output service belonged to different taxable categories. The aforesaid Service Tax Credit Rules were later superseded on 10 September, 2004 by CENVAT Credit Rules, 2004. Rule 3 of these Rules provides that a manufacturer or producer of final product or a provider of output service shall be allowed to take credit (known as 'CENVAT Credit') of various duties under the Excise Act, including the Service Tax leviable under sections 66, 66A and 66B of the Act. Rule 3(4) further provides that CENVAT Credit may be utilized for payment of Service Tax on any output service. It is for this reason that the Master Circular dated 23 August, 2007 was issued superseding all the earlier Circulars, Clarifications and Communications.

15. It is not in dispute that a sub-contractor renders a taxable service to a main contractor. Section 68 of the Act provides that every person, which would include a sub-contractor, providing taxable service to any person shall pay Service Tax at the rate specified. Therefore, in the absence of any exemption granted, a sub-contractor has to discharge the tax liability. The service recipient i.e. the main contractor can, however, avail the benefit of the provisions of the CENVAT Rules. When such a mechanism has been provided under the Act and the Rules framed thereunder, there is no reason as to why a sub-contractor should not pay Service Tax merely because the main contractor has discharged the tax liability. As noticed above, there can be no possibility of double taxation because the CENVAT Rules allow a provider of output service to take credit of the Service Tax paid at the preceding stage.

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30. Thus, for all the reasons stated above, it is not possible to accept the contention of the learned Counsel for the Respondent that a subcontractor is not required to discharge Service Tax liability if the main contractor has discharged liability on the work assigned to the subcontractor. All decisions, including those

 

referred to in this order, taking a contrary view stand overruled.

31. The reference is, accordingly, answered in the following terms:

"A sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability on the activity undertaken by the sub-contractor in pursuance of the contract."

5.2 In view of the above decision of the Larger Bench, the taxability of the amount received as Publicity Charges by the appellant stands established. The decisions relied upon by the Ld Counsel are dated earlier to the said LB decision, and therefore, stand overruled. The clarification provided by the Trade Notice, as claimed by the appellant, cannot be accepted in view of the above decision. We also note that the said Master Circular dated 23 August, 2007 has categorically stated that it supersedes all the Trade Notices/Instructions/Circulars / Communications issued till that date.

6. The Ld Counsel has submitted that the activities undertaken by the appellant fell under the category of 'sale of space or time for advertisement' which became liable to service tax w.e.f. 01 May 2006 only. Consequently, he contended that no Service tax liability would arise on the invoices issued by the Appellant prior to 01 May 2006. Further, the Ld Counsel contented that as the said notice was not issued demanding service tax under the said service, it is liable to be set aside. In this context, we note that the appellant has accepted his liability to pay tax under the alleged service i.e., Advertising Service, and began discharging his liability from May, 2006 onwards. We also note that the appellant disputed the demand on the ground that they were not liable to service tax for services provided in relation to other clients of other advertising agencies, as they were not providing service to ‘clients’ per se, but to intermediary agencies. It is seen that the appellant has never taken this ground before the adjudicating authority at any point. It is also noted that even in the grounds of appeal filed before this Tribunal, this argument was never taken. The appellant has always harped on the fact that as the intermediary agency has paid the service tax, they were not liable to pay tax. We are unable to accept this contention that the notice stands vitiated as the demand has been made under an incorrect service. We note that in the case of Commissioner of Central Excise, Chandigarh V. Dabur India Limited [2004 (178) ELT 819 (Tri. Del)], the Tribunal held that mere wrong mention of provisions of the law did not vitiate show cause notice when all the allegations are contained in the show cause notice. In addition, in the case of Standard Industries Limited V. Commissioner of Central Excise, Mumbai [2003 (158) ELT 623], it has been held that non-mention of Rule in the show cause notice is not fatal if the facts lead to understanding of the same. The Supreme Court in Fortune Impex V. Commissioner [2004 (167) ELT A 134 (SC)] held that non-mentioning of particular section of Customs Act, 1962 would not vitiate the proceedings when allegations and charges against all the appellants were mentioned in clear terms in the show cause notice. In the instant case, we see that the show cause notice has mentioned the allegations and charges clearly. It

 

is also established that the appellant accepted his tax liability on the said amount and began discharging his service tax liability thereafter. Hence, we hold that the there is no infirmity in the notice and the demand is valid.

7. We now take up other submissions made by the Ld Counsel regarding the invocation of the extended period. It has been submitted by the Ld Counsel that the Department had previously issued notice to the appellant and has adjudicated on the same issue of liability of service tax on receipt of publicity charges for the period of FY. 1999 to 2006. In fact, the appellant had received a favourable order from the Adjudicating Authority with respect to the similar activities undertaken by the appellant. The Ld Counsel submitted that it is a settled law that when show cause notice are issued on same issue previously, then subsequent show cause notices cannot invoke the extended period of limitation. Per contra, the Ld AR has submitted that the appellant has deliberately with a wilful intention to evade the tax, included the inadmissible amount of "Publicity Charges' received from "Intermediary Agencies" under the category of 'exempted services' in ST-3 returns. Hence, he contended that the extended period has rightly been invoked. In the instant case, it is on record that the appellant was indicating the amount received as ‵Publicity charges’ as exempted in their ST-3 returns. Thus, the allegation that there was suppression cannot be sustained. In this context, we note that the Hon’ble Supreme Court in Pushpam Pharmaceutical Co. Ltd vs Commissioner of Central Excise [1995 (78)ELT(401)SC] 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. We also note that in the decision in the case of Anand Nishikawa Co. Ltd Vs Commissioner of Central Excise [2013 (288) E.L.T. 161 (SC)] wherein it was held that “suppression of facts” can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty. We also note that a similar proposition of law was laid down by the Delhi High Court in Mahanagar Telephone Nigam Ltd. vs. Union of India and others in W.P. (C) 7542 of 2018 decided on 06.04.2023 wherein the Court observed as follows:

“28. In terms of the proviso to Section 73(1) of the Act, the extended period of limitation is applicable only in cases where service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, or collusion, or wilful misstatement, or suppression of facts, or contravention of any provisions of the Act or the Rules made 10. W.P. (C) 7542 of 2018 decided on 06.04.2023 thereunder with an intent to evade payment of service tax. However, the impugned show cause notice does not contain any allegation of fraud, collusion, or wilful misstatement on the part of MTNL. The impugned show cause notice alleges that the extended period of limitation is applicable as MTNL had suppressed the material facts and had contravened the provisions of the Act with an intent to evade service tax. Thus, the main question to be addressed is whether the allegation that MTNL had suppressed material facts for evading its tax liability, is sustainable.

 

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41. In the facts of this case, the impugned show cause notice does not disclose any material that could suggest that MTNL had knowingly and with a deliberate intent to evade the service tax, which it was aware would be leviable, suppressed the fact of receipt of consideration for rendering any taxable service. On the contrary, the statements of the officials of MTNL, relied upon by the respondents, clearly indicate that they were under the belief that the receipt of compensation/ financial support from the Government of India was not taxable. Absent any intention to evade tax, which may be evident from any material on record or from the conduct of an assessee, the extended period of limitation under the proviso to Section 73(1) of the Act is not applicable. The facts of the present case indicate that MTNL had made the receipt of compensation public by reflecting it in its final accounts as income. As stated above, merely because MTNL had not declared the receipt of compensation as payment for taxable service does not establish that it had willfully suppressed any material fact. MTNL?s contention that the receipt is not taxable under the Act is a substantial one. No intent to evade tax can be inferred by non-disclosure of the receipt in the service tax return." (emphasis supplied) 20. It would transpire from the aforesaid decisions that mere suppression of facts is not enough and there must be a deliberate and wilful attempt on the part of the assessee to evade payment of duty. In the absence of any intention to evade payment of service tax, which intention should be evident from the materials on record or from the conduct of the assessee, the extended period of limitation cannot be invoked. Thus, mere non disclosure of the receipts in the service tax return would not mean that there was an intent to evade payment of service tax."

7.1 We also take note that this issue was also examined at length by the Tribunal in M/s G.D. Goenka Private Limited vs. The Commissioner of Central Goods and Service Tax, Delhi South [Service Tax Appeal No. 51787 of 2022 dated 21.08.2023] and after referring to the provisions of Section 73 of the Finance Act, the Bench observed:-

"13. There is no other ground on which the extended period of limitation can be invoked. Evidently, fraud, collusion, wilful misstatement and violation of Act or Rules with an intent all have the mensrea built into them and without the mensrea, they cannot be invoked. Suppression of facts has also been held through a series of judicial pronouncements to mean not mere omission but an act of suppression with an intent. In other words, without an intent being established, extended period of limitation cannot be invoked. "

(emphasis supplied)

7.2 In the instant case, the appellant had been declaring the amount received as Publicity charges in their ST-3 returns filed regularly. It has also been submitted by the Ld Counsel that the Department had issued an earlier notice on the same issue for the period 1999-2006. Therefore, there is considerable force in the arguments of the Ld Counsel that extended period cannot be invoked under these circumstances. In view of the absence of any evidence to establish the intent to evade more so when there was no suppression of facts, the demand for the extended period cannot be sustained. Consequently, the penalty under section 78 of the Finance Act, 1994 also does not sustain.

8. We find that the impugned order has imposed penalty under section 77 of the Finance Act, 1994 on the grounds that the appellant had failed to file the ST-3 returns with complete and correct details. We note that this allegation is not sustainable as the ST-3 returns was filed in time with all the details, as considered correct by the appellant. Therefore, there is no violation attracting penalty under section 77 of the Act.

9. In view of the above discussions, we uphold that the demand along with interest on the ‘Publicity Charges’ received by the appellant for the normal period only. The penalties under Section 77 & 78 of the Finance Act are set aside. The impugned order is upheld and the appeal is allowed to the extent indicated above. The Miscellaneous Application is also disposed of accordingly.

(Order pronounced in the open Court on 24.10.2024)

 