(2008) 12 RAJ CK 0024

In the Rajasthan High Court

Union of India (UOI) APPELLANT

Vs

Amit Kumar Maheshwari RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:

Arbitration Act, 1940 — Section 37
Central Excises and Salt Act, 1944 — Section 37, 37B
Finance Act, 1994 — Section 60, 69
Limitation Act, 1963 — Section 14

Citation : (2009) 221 CTR 546 : (2009) 13 STR 119 : (2009) 22 VST 397

Hon'ble Judges : N.P. Gupta, J;Kishan Swaroop Chaudhari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.P. Gupta, J.—All these five appeals involve common question of law, being as to whether the circular issued by the Central Board of Excise & Customs dated 20-9-2004, as referred to in the order under appeal, governs the case of the respondent?

2. Appeals No. 26/2007, 70/2006, 3/2007, and 74/2006 were admitted on different dates, by framing substantial question of law, may be differently worded but purportedly to cover this controversy. However, appeal No. 54/2007 was admitted on 23-10-2007, without framing any substantial question of law. However, in view of the above, the said question is hereby framed in this Appeal No. 54/2007 also.

3. The facts in all the five appeals are different, as they are different assessees, carrying on different types of business, did not get registration as required by the relevant chapter, introduced by the Finance Act, 1994, relating to imposition of Service Tax, hereafter referred to as the "Service Tax Act", and notices were issued. Thereupon adjudication of liability of amount of tax and penalty was made. The matter was carried in appeal, and then the matter was finally carried to the Tribunal.

4. The learned Tribunal passed different orders, holding, that the Government of India Ministry of Finance, vide D.O. Letter dated 20-9-2004, framed an Amnesty Scheme, and according to that scheme, found the assessee to be entitled to the benefit of Scheme, and thus the penalty imposed was set aside. However, in some cases where the penalty to the extent of 25%, which was deposited by the assessee, was maintained, and rest was set aside. The same learned Member passed this type of orders in the matters arising out of Appeal No. 26/2007, 70/2006, and 3/2007, while another Member Shri C.N.B. Nair found the case to be covered by earlier judgment of the Tribunal, being 2005 (188) ELT 454 . Likewise, in the judgment forming subject matter of subsequent Appeal No. 54, the same learned Member, who passed the orders in appeal forming subject matter of Appeal Nos. 3, 70 and 26, passed the impugned order to the same effect, following the judgment in Bharat Security Services & Worker''s case, and Anr. judgment in Amit Kumar Maheshwari v. CCE reported in 2006 (2) S.T.R. 506.

5. Thus, in substance, the controversy is, as to whether the assessee is entitled to the benefit of Amnesty Scheme, or not?

6. The necessary facts in this regard are, that admittedly none of these assessees got themselves registered after promulgation of Amnesty Scheme, and during its subsistence, rather they were already registered, and the liability of tax, in some cases related to the period anterior to the registration, while in some cases it relates to the period subsequent to the registration, and its non-payment of tax timely has attracted penalties as above. It is also not in dispute, that in all matters, the requisite tax, interest etc. had already been paid, before expiry of the period provided in the aforesaid Amnesty Scheme, being 30th October, 2004.

7. We may gainfully reproduce the so called scheme. It may be observed, that the papers made available to us show, that as such there is no scheme, rather it is only a communication in the form of D.O. letter, from the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, addressed to the Chief Commissioners, and encloses therewith certain proformas of application for registration, acknowledgment, and declaration. However, the benefits flow from the contents of the communication itself, and therefore, we may gainfully quote the communication dt. 20-9-2004, which reads as under:

D.O.F. No. 137/39/2004-CX.

420th September 2004

My Dear Chief Commissioner.

Subject: Extra-ordinary taxpayer friendly scheme for instant registration of service providers.

Hon''ble Finance Minister has launched an extra-ordinary taxpayer friendly Scheme for registration of those service providers who have not got themselves registered so far. The details of the scheme are enclosed as annexure. This scheme aims to register all service providers on the basis of their declaration and who had earlier failed to register themselves with the department due to ignorance or any other reason with full waiver of penalty. This scheme is effective with immediate effect.

As per the scheme any service provider can make a declaration to the department with regards to his past liabilities towards the service tax and interest payable. Without any inquiry or questions, the departmental authorities will accept the declaration and on the spot give a registration to the service provider. Penal proceedings against the person approaching under this scheme will be completely waived off.

This scheme commences with immediate effect and will be operational only up-to 30th October 2004 and no extension will be allowed. You should publicise the scheme and organize sufficient numbers of camps to facilitate the service providers who wish to avail of the relaxations given under the scheme through out your jurisdiction. You should instruct your officers to be courteous and polite, they should not put any uncomfortable questions to the persons opting for the scheme.

You should mobilize all the resources available with you in a judicious manner, so that enough number of officers is available for implementing the scheme.

Since the scheme has been launched at the instance of Finance Minister you should give a very wide publicity in print media to the scheme in your areas through Banners, hoardings, press releases etc. Hon''ble Finance Minister has also sanctioned a sum of Rs. 20 lakhs for each zone to undertake the publicity work in relation to Service Tax. Since ministry has taken considerable pains in framing the scheme and also provided funds at your disposal to make the scheme a success, it expects excellent results from you and your officers. Gear up your machinery and make the scheme a success. Any failure in implementing the scheme at any level will be viewed very seriously.

With best wishes,

Yours sincerely

Sd/-

(S. Chandra).

Encl: as above

Office of the Chief Commissioner (JZ) Central Excise (Jaipur'' Zone), Jaipur.

C. NO. CCO (JZ) ST/38/2004

DATE : 20-9-2004

Copy Forwarded to the Commissioner, Central Excise, Jaipur-I and Jaipur-11 for information and necessary action.

Sd/-

Deputy Commissioner (CCO)

Speed Post.

Central Excise Commissioner, jaipur-II.

________________________________ C. No. V (ST)30/37/JP-lI/04/2119-23

Dt. 21-9-04.

Copy forwarded to the Deputy Comm/Asstt. Comm. C. Ex. Div. Ajmer, Bhilwara, Chittorgarh, Jodhpur & Udaipur for information with regards to send weekly report for every Monday positively.

Sd/-

21/9/04

Asstt. Comm. (ST).

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137/39/2004-CX.

Annexure

Form of Declaration

To,

The Designated Authority:

Sir,

I hereby make the declaration for being registered in terms of Section 69 of the Finance Act, 1994 (32 of 1994).

1. Name: ___________________________________

2. Address of the business premises: ________

3. Date of Commencement of Business: _____________

4. Taxable Services: ________________________

5. Date from which service tax is payable:________

Turnover of the services since the date when service tax became payable: ____ | Financial |Turnover of tax-| Service Tax pay|Interest payable,| |Year |able services | able |if any | |rendered | | | | ____

6. The declaration with regards to the Service tax and interest payable given above is correct and true to the best of my knowledge.

7. Along with this declaration I am enclosing the details in Form ST 1 for being registered with Service tax department.

8. Signature: ______________________

9. Place: __________________________

10. Date: __________________________

Notes:

(a) The service tax is payable @ 5% upto 14th May 2003, 8% for period between 14th May 2003 and 10th September 2004 and 10% for period after 10th September 2004.

(b) For period after 10th September 2004, education cess @ 2% of Service Tax payable is also to be paid.

(c) Interest is payable @ 24% upto 11th May 2002, 15% for period between 11th May 2002 and 10th September 2004 and 18% for period after 10th September 2004.

(d) In case where services have become taxable from date in middle of Financial Year indicate turnover rom that date.

Acknowledgement

To,

____

____

____

Sir,

Your declaration dated______________has been received. Your registration number in form ST2 is enclosed.

You should deposit the amount of Service Tax and interest as indicated by above within seven days and report compliance.

End: Form ST-2

Signature of the Officer re-

ceiving the declaration

Place:

Date:

****

FORM ST-1

Application for registration u/s 60 of the Finance Act 1994 (32 of 1994)

Name of the assessee:

2. Address of the assessee:

2A. PAN Number:

3. Address of the premises to be registered:

4. Category of the service:

5. Tax/telex and phone number:

6. Form of organization (individual/company/ partnership, etc.):

7. Additional Information required in the case of stock-broker:

Name of the member, with code No.:

(b) Name of stock exchange registered with:

(c) Date of admission of membership:

(d) Whether member of more than one stock exchange. If so, please give name of the stock exchange with code numbers:

(e) Registration number allotted by securities and Exchange Board of India (copy of certificate) registration may be enclosed or a copy of application for registration with SEB1 may be enclosed:

8. I/We________agree to abide by all the provisions of Service Tax Rules, 1994 and any order issued thereunder.

9. I/We__________declare to the best of my/our knowledge and belief that the information furnished herewith is true and complete.

Place:

Date:

Signature of assessee or his authorized

representative.

****

F. No. 137/39/2004-CX.4

Government of India

Ministry of Finance

Department of Revenue

Central Board of Excise and Customs

New Delhi, the 22nd September, 2004

To

All Chief Commissioners of Central Excise.

Subject: Extra-ordinary taxpayer friendly scheme for registration of service providers.

I am directed to refer to the D.O. of even number dated 20th September, 2004 on the above mentioned subject. D.G.(ST) has pointed out some error in the annexed "declaration form". The revised declaration forms are enclosed herewith for necessary action at your end.

Yours faithfully

Sd/-

(Sanjiv Srivastava)

Deputy Secretary (CX.4).

Office of the Chief Commissioners

Central Excise (JZ) Jaipur

CN CCO(JZ) ST/38/2004 3701.

Date: 23-9-2004

Copy forwarded to the Commissioner Central Excise, Jaipur-I and Jaipur-II in continuation to this office endorsement of even No. NIL dated 20-9-2004 for information and necessary action please.

Sd/-

Deputy Commissioner (CCO)

Central Excise Commissionerate, Jaipur-II

C. No. V(ST) 30/37/JP-II/04

Dated: 24-9-04

Copy forwarded to the Deputy/Asstt. Commissioner, Central Excise Division, Ajmer/Bhilwara/Chittorgarh/Jodhpur/Udaipur for information & necessary action.

Sd/

24-9-04

Asstt. Commmr.(ST)

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Annexure

Form of Declaration

To,

The Designated Authority:

____

Sir,

1 hereby make the declaration for being registered in terms of Section 69 of the Finance Act, 1994 (32 of 1994).

1. Name:

2. Address of the business premises:

3. Date of Commencement of Business:

4. Taxable Services:

5. Date from which service tax is payable:

Turnover of the services since the date when service tax became payable:

____

_____ |Financial |Turn over of taxable |Service Tax payable |Interest | |Year | services rendered | |payable, if | | | | |any | _____________________________ ____ | | | | | ________________ ____ | | | | | ___ ____ ___ | | | | | ____ ________________

6. The declaration with regards to the Service tax and interest payable given above is correct and true to the best of my knowledge.

7. Along-with this declaration I am enclosing the details in form ST 1 for being registered with Service Tax department.

8. Signature:_______________________

9. Place:_____________

10. Date:___________________________

Note.

(a) The service tax is payable @ 5% up to 14th May 2003, 8% for period from 14th May 2003 and upto 9th September 2004 and 10% from 10th September 2004.

(b) For period from 10th September 2004, education cess @ 2% of Service Tax payable is also to be paid.

(c) Interest is payable @ 24% up to 11th May 2002,15% for period from 11th May 2002 and up-to 9th September 2004 and 13% from 10th September 2004.

(d) In case were services have become taxable from date in middle of Financial Year indicate turnover from that date.

____ Acknowledgement

To,

____

____

____

Sir,

Your declaration dated___________ has been received. Your registration number in form ST2 is enclosed.

You should deposit the amount of Service Tax and interest as indicated by above within seven days and report compliance.

Encl: Form ST-2

Signature of the Officer receiving

the declaration

Place:

Date:

****

8. Firstly the question is, as to whether this scheme has a statutory force, so as to term it as a taxing statute. Learned Counsel for the Revenue drew our attention to the provisions of Section 83 of the Service Tax Act, whereby provisions of Section 37B of the Central Excise Act, 1944 have been made applicable, and contended, that this circular has been issued in accordance with Section 37B of the Central Excise Act. Section 37B of the Central Excise Act reads as under:

37B. Instructions to Central Excise Officers. - The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or expedient so to do for the purposes of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this act shall observe and follow such orders, instructions and directions of the said Board:

Provided that no such orders, instructions or directions shall be issued-

(a) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Commissioner of Central Excise (Appeals), in the exercise of his appellate functions.

9. If the aforesaid scheme, or the communication dated 20-9-2004 is read in conjunction with Section 37B, it is clear that it is not covered by Section 37B. The communication emanates from the Hon''ble Finance Minister, who has launched extraordinary taxpayer friendly scheme, while Section 37B does not envisage in launching of any such scheme, rather it comprehends powers of the Board (Central Board of Excise and Customs) wherever it considers it necessary or expedient so to do, for the purposes of uniformity in the classification of excisable goods, or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions. In addressing communication dated 20-9- 2004 the Central Excise Board has not even purported to consider any expediency or necessity, for the purpose of uniformity with respect to levy of duties of excise on such goods, to issue such orders, instructions and directions. Simply because the desire of the Hon''ble Finance Minister is published through conduit pipe of the Central Excise Board, it does not have the effect of clothing it with statutory powers, or to attach to it statutory efficacy available consequent upon Section 37 and Section 37B. Thus, in our view, it cannot be said to be statutory notification, issued in exercise of powers u/s 37B.

10. Then, the question is, as to what is the nature of this communication, and the obvious answer is, that it is only an administrative instruction, issued by the Hon''ble Finance Minister, purportedly, to provide benefit to the persons, who earlier failed to register themselves with the department, and in substance is intended to cast the net of service tax wider and wider, and in order to augment the revenue the concessions provided in the communication were sought to be thrown open. Obviously, therefore, the communication has to be read, interpreted, understood, and appreciated, with this spirit, viz. to provide benefit to the defaulters on the one hand, and to cast the net of service tax wider and wider, so also to augment the revenue, on the other hand.

11. With this preface, it may also be noticed, that the term "Scheme" as such has very many parameters to be complied with, while in the present case the

communication simply conveys launching of some extra-ordinary tax-payer friendly scheme, and no such scheme has seen the light of the day, except this communication, which only encloses therewith certain proformas. As such it cannot be said to be any "Scheme", in true sense of the term.

12. With this background it may be noticed here, that this communication dated 20-9-2004 had been subject matter of adjudication by various Tribunals, in umpteen number of cases. Before going through those cases, we think it appropriate to first deal with the cases cited by the learned Counsel for the Revenue, basically about principles of interpretation.

13. The first judgment cited is the case of The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur, , and learned Counsel referred to para 22 onwards. In this case, the question was, that an appeal was filed before the Dy. Commissioner which was dismissed in default. Then application for restoration thereof was filed, which remained pending for quite some time. In the meantime, the provision authorising dismissal of appeal in default was struck down. Obviously therefore, the original dismissal was treated to be dismissal on merits, and then against that order, revision was filed. Limitation for revision was one year, which, on showing sufficient cause, could be extended for another six months, while the revision was filed after more than 18 months, and the period of time spent in prosecuting the restoration application was sought to be excluded u/s 14 of the Limitation Act, or on its analogy. In that fact situation, the Hon''ble Supreme Court, by referring to various previous judgments of Privy Council etc., based on Section 37(5) of the Arbitration Act, held, that where upper time limit has been prescribed, and sufficient cause is shown, delay can be condoned, in the maximum, only up to a specified time limit, and the analogy of Section 14(2) cannot be imported, apart from the fact, that Section 14, as such, is not applicable, as the authorities under the taxation statutes are not courts, but are administrative authorities. In our view, on principle there is no dispute about this legal proposition.

14. The next case relied upon is, in Bharti Telecom Ltd. Vs. The Commissioner of Customs, . In this case, there was an amnesty scheme, wherein where the assessee had wrongly availed the credit of MODVAT on inputs, and availed the duty free clearance of the goods, claiming exemption under Notification No. 203/92, under the Value Based Advance Licence, in cases, where the assessee was not entitled to avail MODVAT credit, he was required to reverse it, and to pay interest, and other consequences were to flow, for that, an amnesty scheme was floated, requiring interest to be deposited for the period between the date of export and date of reversal, which interest was required to be deposited by 31-1-1997. In that case, the amount was deposited on 7-2-1997 only. In that background, interpreting the scheme, it was held, that such scheme or exemption notification have to be strictly construed, and that the provision in the notification, for deposit of interest by the specified date, has to be interpreted strictly, in the manner stated in the notification, and on no other basis. It was

held, that it is well settled, that in taxing statute there is no room for any intendment, and regard must be had to the clear meaning of the words, and that, the matter should be governed only by the language of the notification.

15. In our view, so far as the provision of deposit, under the communication dt. 20-9-2004 is concerned, being 30-10-2004, there is no dispute, that it is required to be strictly construed, and in all the cases in hand, admittedly, the amount has been deposited before the said date, as obviously if the amount had not been deposited, the assessee would not have been entitled to any benefit of this communication. There is also no dispute about the proposition, that in taxing statute there is no room for any intendment, and regard must be had to the clear meaning of the words, and that the matter should be governed only by the language of the notification. The difficulty is, that this communication dt. 20-9-2004 is neither notification, nor a taxing statute, rather as held above, it is only an administrative instruction, granting benefits and reliefs, in an attempt to cast service tax net wider and wider, and to augment the revenue.

16. The next judgment relied upon is, in Union of India and others Vs. M/s. Wood Papers Ltd. and another, . In this case also, it has been held, that exemption notification has to be read as a whole, and is required to be considered as a whole. There is no dispute about the legal proposition propounded therein.

17. The next case relied upon is in Commissioner of Income Tax, Delhi Central Vs. Modi Spinning and Weaving Mills Co. Ltd., . This judgment in our view, is a judgment on its own facts, and is of no assistance to either side.

18. Now we take up the cases cited on either side, which have considered this communication dt. 20-9-2004. Of course, we have not been made available the copy of judgment in Amit Kumar Maheshwari''s case. However, the learned Counsel for the assessee first relied upon the judgment in 2005 (188) ELT 454 . This is a judgment rendered by Shri S.S. Kang, the learned Single Member (Vice-President of the Principal Bench, New Delhi) and in that case, the orders in appeal had set aside the penalties imposed on assessee, as the assessee had paid service tax along with interest prior to 20-9-2004, by holding that Extra-ordinary Tax Payer Friendly Scheme was circulated vide letter dt. 23-9-2004, whereunder any service provider, who got registered up to 30-10-2004, are not liable for any penal action and thus, in view of the immunity from penal action, no penalty could be imposed on the assessee, as they had paid service tax prior to 30-10-2004. A contention was raised therein, that the assessee was already registered prior to the floating of the scheme and, therefore, are not entitled to benefit of scheme, and it was held, that the service provider who got registered, and paid service tax, during Extra-ordinary Tax Payer Friendly Scheme up to 30-10-2004, are not liable to pay any penalty, therefore, no infirmity was found in the order of the Commissioner, as the assessee had paid service tax prior to 30-10-2004, they are not liable to any penalty. This judgment is dated 13-6-2005 (28-4-2005).

19. Then the learned Counsel placed reliance on a judgment rendered by a learned Single Member M.V. Ravindran dt. 5-12-2006, rendered in Appeal No. 312/2006, which has been passed, following the judgment in Amit Kumar v. CCE, jaipur-II reported in 2006 (2) S.T.R. 506, and C.C.E. Bhopal v. Bharat Security Services & Worker''s case. It would suffice to say, that Appeal No. 54/2007 in this bunch is filed against this very judgment dt. 5-12-2006.

20. The next judgment relied upon is Tele Tech Communication v. Commissioner of C. Ex. dt. 4-6-2007 2007 (7) S.T.R. 695 (T), rendered by learned Single Member, (2009) 19 STT 197 . In that case, the Tribunal had found, that the scheme makes it clear, that service providers were welcome to avail of the scheme, irrespective of whether proceedings have been initiated or not. In that view of the matter, the assessee was held entitled to the benefit of exemption from penalty. In that case, the assessee had applied for registration only after being served with a notice.

21. Then the next case relied upon is the order of the Tribunal West Zonal Bench, Mumbai dt. 17-10-2006 in Laxmichand Dharshi v. Commissioner of C. Ex. rendered by the learned Single Member (2007) 7 STT 79 . In that case also, the facts were, that the assessee did not pay tax, nor did file return, for the period 1-10-2002 to 30-4-2003, and deposited the tax and interest on 10-2-2004. Penalty was defended on the ground of delay being unintentional. However, when the matter went to the Tribunal, relying on the judgment in Bharat Security Services & Worker''s case, it was held, that there has been a delay on the part of the assessee in paying the service tax. However, taking into consideration the Tax Payer Friendly Scheme, introduced by the Government, and the Tribunal decision in the case of Bharat Security Services & Worker''s case, the penalties were set aside.

22. The next judgment relied upon is again of Tribunal West Zonal Bench, Mumbai dt. 4-9-2006 rendered by the learned Member, Archana Wadhwa in AR. Sandeep C. Sikchi vs. Commissioner of Central . In this case also, the amount of service tax for the period October 1998 to March 2003 stood paid on 26-7-2003, show cause notice was issued for penalty on 6-12-2004, which was dropped. In appeal the Commissioner imposed the penalty, and the Tribunal in further appeal, relying upon the judgment in Bhamt Security Services & Worker''s case held, that the assessee had admittedly paid the tax, and had themselves got registered prior to 31-10-2004, there is no justification for enhancement of penalty imposed on the assessee. Thus the penalty was set aside.

23. The next case relied is again of Tribunal West Zonal Bench, Mumbai dt. 28-5-2007, in Arc. Dinesh Burad v. Commissioner of Central Excise and Customs rendered by learned Member, (2008) 12 STT 47 . In this case, the assessee failed to pay service tax from October 2001 to March 2003, and had paid the entire amount of service tax by 1-3-2004. The adjudicating authority imposed penalty of Rs. 500/-, the Commissioner enhanced the penalty. In further appeal to the Tribunal, the Tribunal found, that the Central Government of India came out with

the Extraordinary Tax Payer Friendly Scheme, for those persons who were not registered and were not paying service tax. The said scheme operated on the basis, that any person who has not registered but gets himself registered and discharged service tax liability and interest before 30-10-2004, no penal provision could be invoked against such assessee. Then also proceeded to rely upon Bharat Security Services & Worker''s case, and penalty was set aside.

24. The next case relied upon is again of Tribunal West Zonal Bench, Mumbai dt. 27-6-2008, rendered by the same learned Member, in (2008) 15 STJ 123 , where again relying upon the judgment in Bharat Security Services & Worker''s case, the revenue''s appeal was dismissed.

25. The next case relied upon is of Tribunal West Regional Bench, Ahmedabad dt. 23-3-2007, in 2007 (120) ECC 343 . In this case, the tax for the period 1-7-2003 to 30-4-2004 was not paid. However, on detection by Revenue the same was deposited on 6-8-2004, along with interest, and the learned Tribunal, relying on the judgment in Bharat Security Services & Worker''s case held, that no penalty is imposable on the assessee, and the penalty was set aside.

26. The next judgment relied upon is of Principal Bench Delhi dt. 14-2-2006, in 2006 (104) ECC 589 , rendered by the learned Member, Shri M.V. Ravindran. In this case, the Commissioner had set aside the penalty by holding as under:

As regards the imposition of various penalties under the different Sections quoted above for violation of the relevant provisions, 1 find that there are catena of decisions of various appellate for a to the effect that in the initial stages of introduction of this public oriented wide spread new levy, many of new assessees being ignorant, such procedural delays in taking up of registration and consequent filing of the returns etc. a lenient view can be taken. This was precisely the reason as to why many new Voluntary Disclosure schemes for voluntary compliance like Extra Ordinary Tax Payer Friendly Scheme declared under Board''s F. No. 137/39/2004-Cx,4 dated 23-9-04 to be operational upto 30-10-04 in respect of the assessees who had not at all complied with the provisions of Service Tax Law had been launched waiving the various penalties under the aforesaid Sections 75A, 76 & 77 etc. When the assessees who did not at all comply with the S.T. Law can be given immunity provided they pay the Service Tax along with appropriate rate of interest, there is no tangible and logical reason as to why the law abiding assessee who had got himself registered more or less in time and had also started paying the Service tax along with interest, much before the new scheme became operational, should be denied the benefit of waiver of the penal provisions referred to above for late registration, delay in filing of relevant returns etc. all of which are procedural in nature. In view of my aforesaid findings, I am inclined to waive the penalties imposed on the said party.

27. And thus the finding was upheld by the learned Tribunal, in view of the aforesaid circular dt. 23-9-2004.

28. Then the next judgment relied upon is dt. 18-1-2006, of the Principal Bench, New Delhi rendered by the same learned Member, M.V. Ravindran in Commissioner of C. Ex. v. R.K. Electronics Cable Network reported in 2006 (2) S.T.R. 153, wherein also the Commissioner had practically recorded identical finding, as recorded in Kamlesh Kumar''s case, and learned Tribunal relying upon the judgment in Bharat Security Services & Worker''s case upheld that order.

29. The last case relied upon is judgment dt. 29-2-2008, rendered by West Zonal Bench at Ahmedabad, in (2008) 13 STJ 266 , rendered by the learned Member Archana Wadhwa. In that case, the period involved was April 1999 to March 2004. The assessee was registered with the department on 29-9-2003, and the penalty was defended on the ground, that assessee was not aware of the leviability of service tax upon him. Then in appeal reliance was placed on scheme floated by communication dt. 20-9-2004, and contended, that admittedly, assessee has paid tax before 30-10-2004, while the counsel for the Revenue argued, that the assessee was registered with effect from 29-9-2003, and as such the provisions of this scheme would not apply, and reliance was placed on CCE. Bhopal v. Mankodi Enterprises reported in 2006 (2) S.T.R. 150 , and 2007 (115) ECC 286 , and the learned Tribunal found, that both these cases related to payment of service tax after registration, whereas in the present case, the dispute is, as regards the service tax prior to the period of registration. As such, the ratio of the law as declared in both the cases is not applicable. Then relying upon Bharat Security Services & Worker''s case, it was held, that assessee is entitled to the benefit of the said scheme, if the service tax for the past period stands paid by him by 30-10-2004. It was also noticed, that Bharat Security Services & Worker''s case has been followed by the Tribunal in the case of 2007 (120) ECC 347 .

30. Now we may refer to the two judgments, in Mankodi Enterprises'' case and Pankaj Oil Trading Corporation''s case, which have been relied upon by the learned Counsel for the Revenue, and as noticed, had been cited on behalf of Revenue in jai Securities Services'' case. In Mankodi Enterprises'' case the assessee was liable to pay tax from 1-9-1999 onwards. The assessee took registration of service tax in October 2003, show cause notice was issued demanding service tax and penalty, which was adjudicated by the Dy. Commissioner, Central Excise, who demanded service tax and imposed various penalties, the levy of service tax was upheld, but the penalties imposed u/s 75A, 76, 77 and 78 were dropped, on the ground of circular dt. 23-9-2004. It was argued by the Revenue, that the assessee was required to take out service tax registration from 1999, and was required to file service tax return, and pay the service tax regularly, but the assessee has not paid tax till October 2003, and when the department asked the assessee to pay tax, then they took registration and paid service tax, and submitted the return in October 2003, and that the tax was paid by them only after adjudication of the proceedings, therefore, they are not covered by the voluntary disclosure scheme. On the other hand, reliance was placed on the said circular. The learned Tribunal noticed, that the Commissioner

had dropped the penalty, on the ground, that under the said circular, when the assessee, who did not at all comply with the service tax law, can be given immunity, provided they pay service tax with appropriate rate of interest, and there is no tangible and logical reason as to why the law abiding assessee, who had got himself registered more or less in time, and had also started paying the service tax in time, much before the new scheme became operational, should be denied the benefit of waiver of penalty. The learned Tribunal found, that the circular was only with respect to those service providers, who had earlier failed to register themselves due to ignorance or for any other reason, and who came forward and paid the past liability within the period prescribed under this circular. It was found, that this circular was not applicable for those persons, who had already taken registration, or were paying service tax. Thus, the order waiving penalty, on the basis of circular was set aside. It is a different story, that ultimately in the order, the learned Tribunal modified the penalty, and reduced to a total amount of Rs. 17,500/-.

31. Then in Pankaj Oil Trading Corporation''s case, which is a judgment dt. 20-11-2006, did consider the judgment in Bharat Security Services & Worker''s case, and Mankodi Enterprises'' case as well. In that case the assessee had received commission for the period from 1-9-2000 to 31-6-2001 and 1-7-2001 to 31-12-2001, and was liable to pay service tax, and even after obtaining registration, service tax was not paid in its entirety, and did not file any service tax return. The Assistant Commissioner found, that the assessee failed to disclose the value of taxable service, and suppressed it, and thereby evaded the service tax, by not filing the returns. Then, the tax liability, after adjusting the amount already paid, was adjudicated, and penalty was imposed. The Appellate Commissioner reduced the penalties. Then, before the learned Tribunal, the assessee relied upon the Amnesty scheme, and also relied upon the judgment of learned Single Member Bench, in 2006 (107) ECC 592 , where the penalties were set aside, on the ground that "there was no tangible and logical reason as to why the law abiding assessee who had got himself registered more or less in time and had also started paving the service tax along with interest, much before the nezo scheme became operational, should be denied the benefit of waiver of the penal provisions referred to above for late registration". Likewise the judgment in Atnit Kumar Mahcshwari''s case and Bharat Security Services & Worker''s case were also relied upon, while the Revenue relied upon the judgment in Mankodi Enterprises, and the learned Tribunal, in that case, in para-7 found, that the scheme was only in respect of service provider, who had earlier failed to get themselves registered, due to ignorance, or for any other reason, and who came forward and paid past liability within the prescribed period in the circular. Therefore, it was not found to be applicable to the persons who have already taken registration, or were paying service tax. It was also found, that it is evident from the wordings of the scheme, as announced under the circular dt. 20-9-2004, that it was intended only for instant registration of service providers, who could make declaration to the department, with regard to past liabilities

towards the service tax and interest payable. Then, the case was considered on merits, and the liability was upheld.

32. At this place we may observe, that these two cases in Mankodi Enterprises and Pankaj Oil Trading Corporation are not the cases regarding the payment of service tax after registration, as assumed by the learned Member in jay Security Services'' case, for distinguishing these two judgments. Be that as it may. The fact also does remain, that in Jay Security''s case, the amount did involve the amount for the period, which included the period after registration, inasmuch as the period involved was April, 1999 to March, 2004, while the assessee was registered on 29-9-2003. Thus, in a way the judgment in jay Security Services'' case is required to be considered to take a view, that even in cases where the amount relates to period prior to registration or subsequent to registration, the scheme does apply.

33. These are the only cases brought to our notice on either side. We make it clear that, no judgment of any High Court, or the Hon''ble Supreme Court, has been cited on either side, which may have taken into consideration the Amnesty Scheme, circulated vide this communication dt. 20-9-2004.

34. In our view, thus, the majority of the judgments do take the view, that the benefit of the scheme is available to the assessees, who were already registered though belatedly, and had deposited the entire amount of tax and interest, before the cut off date, prescribed in the scheme being 30-10-2004.

35. We feel constrained to consider the norms of judicial propriety, repeatedly laid down by the Hon''ble Supreme Court, in the matter of taking different views by the coordinate Benches, and the requirement of referring the matter to the Larger Bench, if a different view is sought to be taken.

36. If all the judgments mentioned above are considered on that basis, it is clear, that all the judgments have been rendered by the different learned Single Member of the different Benches, and so far Principal Bench of New Delhi is concerned, there also a view, different from the view taken in Mankodi Enterprises and Pankaj Oil Trading Corporation''s cases has been taken.

37. Significantly the first judgment is in Bharat Security Services & Worker''s case, which is rendered by the Principal Bench at Delhi, and is judgment dt. 13-6-2005, while the judgment in Mankodi Enterprises''s case is also of the Principal Bench, New Delhi dt. 6-12-2005, and does not take notice of the judgment rendered by the learned Vice-President on 13-6-2005 in Bharat Security Services & Worker''s case. Then, all other judgments cited on behalf of the assessee are subsequent judgments. Pankaj Oil Trading Corporation''s case of course does consider the previous judgments, but then, the learned Member has taken upon himself the task of taking a different view, without adhering to the requirement of judicial propriety, of referring the matter to Larger Bench.

38. This leaves us to consider, as to whether we should countenance the view

taken in Pankaj Oil Trading Corporation''s case and Mankodi Enterprises''s case, or the view taken in all other cases. This is one aspect of the matter.

39. The other equally important aspect of the matter is, that admittedly, the Revenue, in all, or even in any of the matters, which judgments have been referred to and relied upon by the learned Counsel for the assessee, except that 2007 (8) S.T.R. 278 , which under appeal before this Court, has not challenged further. We are aware of the judgment of the Hon''ble Supreme Court in C.K. Gangadharan and Another Vs. Commissioner of Income Tax, Cochin, , which has also been relied upon by the learned Counsel for the Revenue, but then, in that case the Hon''ble Supreme Court has held, that merely because in some cases the Revenue has not preferred appeal, that does not operate as a bar, for the Revenue to prefer an appeal in another case,where there is just cause for doing so, or it is in public interest to do so, or divergent views are expressed by the Tribunals or the High Courts.

(Emphasis supplied)

40. To say the least, the present situation, in view of the things discussed above, does not fall, within any of the exception laid down by the Hon''ble Supreme Court in para-13 of the judgment in C.K. Gangadharan''s case, and therefore, it has to be taken into account, that it is the consistently established legal position, laid down by various Tribunals of the country, that in such cases, where the assessee is registered, even before the commencement of the Amnesty Scheme, and has paid all dues of tax and interest, before the cut-off date given in the scheme, being 30-10-2004, would be entitled to the benefit of the Amnesty Scheme. And therefore there is no occasion for this Court to unsettle the settled position, and now give rise to upheaval, to generate litigation, even in the matters, which stand closed. This is second aspect of the matter.

41. Still most important aspect of the matter is, that even if we were to consider the matter on merits, as held above, the communication dt. 20-9-2004 is only an administrative instruction, issued for the benefit of the service providers, who volunteered to get themselves registered, and discharged all their liabilities of tax and interest, up to the cut-off date, by providing immunity from penalty. This is beneficial part of the instruction for the service providers, while it is sought to be beneficial to the State, i.e. the Revenue, viz. it is intended to cast the net of the service tax wider and wider, and to augment the revenue. Thus, the instructions are calculated with the motive to benefit both sides, the service provider as well as the Revenue, and as such is not a taxing statute. Therefore, it is required to be implemented in the manner, which is not discriminatory, and which is reasonable, obviously to both the parties.

42. If considered from that stand point, we find ourselves to be leaning towards the interpretation, that when the person who has not got registered till issuance of the communication, if is intended to be given the benefit of immunity from penalty, the person who has already got himself registered, and is in the default

of payment of interest or tax, cannot be denied the immunity from penalty, provided of course, he strictly complies with the requirement of the communication, with regard to deposit of the amount, positively before the cut-off date.

43. It is required to be grasped, that the communication is of 20-9-2004. In some judgments it has been referred to as 22-9-2004, while in some judgments it has been referred to as 23-9-2004. There may be a controversy, as to what is the starting point of the scheme, i.e. 20-9-2004 or 23-9-2004, or from the date the person concerned comes to know of it. The significance of this confusion is, that if the interpretation sought to be projected by the Revenue is taken, and if it is considered that the Scheme commenced on 23-9-2004, then even the person, who may have got himself registered on 21-9-2004, and happened to be defaulter, will have to be denied the benefit of immunity, or even the person who got himself registered on 22-9-2004, and is a defaulter will have to be denied the benefit of immunity, while on the other hand if it is taken to have commenced on 20-9-2004, then such person will get the benefit of immunity. Thus, the person even without knowing of the scheme, may have got himself registered on 21-9-2004, and would be in dilemma as to whether he is to get benefit of the immunity or not, such interpretation cannot be put on the Amnesty Scheme. Obviously the communication dt. 20-9-2004 does not prescribe the precise starting point of time of the scheme.

44. Carrying the things further logically, if the scheme is taken to have commenced on 20-9-2004, then if the benefit is available to the person who gets himself registered on 20-9-2004, despite being defaulter for any length of time, the benefit cannot be denied to a person who may be merely technically defaulter, and who in good sense, thought it proper to get himself registered on 19-9-2004 itself, and did not allow his default to continue for one more day. The interpretation sought to be projected by the Revenue, does not thus stand the scrutiny. On the other hand, a proper reading of the communication does only show, that it is intended to provide immunity to the defaulters, who choose to deposit the arrears of tax and interest by the cut-off date, and obviously, since for payment or deposit of the amount, the formalities of registration and declaration are necessary, the forms have been enclosed with the communication, and it has been directed, that the declaration would be accepted, and they would be given spot registration without any sort of questions. Much of the stress laid on the requirement of submitting declaration cannot be accepted, for the simple reason, that as observed above, the forms are prescribed under the relevant Rules of Service Tax itself; the Application Form being ST-1, Acknowledgment also forming part of the same form. So far declaration proforma is concerned, if it were to be read, would show, that it is only in the nature of forwarding letter of the application for registration, and nothing beyond that. Thus all that this so called scheme means is, that even if a person comes forward to apply for registration, and pays all arrears of tax and interest, before the cut-off date, he is conferred immunity from any sort of penalty. In that view of the

matter, it cannot be said, that the immunity should be denied to the person who has already got himself registered.

45. Then, in the first para it is clearly mentioned that the scheme aims to register all service providers on the basis of declaration, and with this, with a conjunctive word "and who had earlier failed to register themselves". This "having earlier failed to register" cannot be confined to mean earlier to 20-9-2004, or 23-9-2004, but is required to mean, or construed to mean, "who failed to register at appropriate time as required by the Service Tax Act".

46. Thus, considering the matter from any aspect whatever, as discussed above, in our view, the view taken in Mankodi Enterprises, and Pankaj Oil Trading Corporation''s case cannot be accepted, and the view taken in all other cases is required to be accepted. It is required to be held, that the benefit of the circular dt. 20-9-2004, does very much cover the case of the present assessees, as well.

47. The question as framed is accordingly answered agairist the Revenue, and in favour of the assessee. The appeals are dismissed.[However, with the clarification, that if the amount of penalty to the extent of 25%, has been deposited by any of the assessees in these five appeals, then that amount of penalty need not be refunded to them.

