IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.07.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A. NOS. 1175 TO 1178 OF 2010

Commissioner of Central Excise
& Service Tax
1, Williams Road,
Cantonment
Tiruchirappalli 620 001. ... Appellant/Respondent in all the appeals

- Vs -

G.Govindaraj ... R-1 in CMA 1175/2010/Applicant

N.Muruganandam ... R-1 in CMA 1176/2010/Applicant

G.Sanjeevi ... R-1 in CMA 1177/2010/Applicant

M/s.Lakshmi Travels
No.91, Kamatchi Josier Street
Kumbakonam - 1. ... R-1 in CMA 1178/2010/Applicant

Customs, Excise & Service
Tax Appellate Tribunal
South Zonal Bench
Shastri Bhavan Annexe-I
1st Floor, 26,
Haddows Road
Chennai 600 006. ... R-2 in all the appeals

(R2 Given up)



Appeals filed under Section 35-G of the Central Excise Act against the order dated 24.08.2009 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order Nos.1079 to 1082 of 2009.

For Appellant : Mr. M.Santhanaraman

For Respondents : Mr. M.N.Bharathi for M/s.Ramesh Venkatachalapathy for R-1 in CMA 1175 & 1176/2010
Mr. A.Sivasubramanian for R-1 in CMA 1177/10
No Appearance for R-1 in CMA 1178/2010
R2 - Tribunal

COMMON JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in allowing the appeals filed by the respective first respondent herein, the appellant/Revenue is before this Court by filing the present appeals. This Court, vide order dated 11.06.2010, while admitting the appeals, framed the following substantial questions of law for consideration :-

> “1) Whether in the facts and circumstances of the case and the settled position of law that the firm has no distinct juristic personality other than the partners constituting the partnership in terms of the Central Excise Act, 1944 and the Rules made thereunder and the provisions of the Indian Partnership Act, 1932, the Hon'ble CESTAT is right in setting aside the demand of service tax on the partners of the firm M/s.Lakshmi Travels, Karaikal, for renting the cabs for the reason that marking of copies of the show cause notice to the three partners along with the firm, without raising any demand in the notice for recovery from the partners is not sufficient/a substitute for show cause notice?
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> 2) Whether a demand of service tax could not be confirmed on the partners of the dissolved firm M/s.Lakshmi Travels, Karaikal, when the said firm was found by the adjudicating authority to be liable for payment of service tax on renting the cabs and the partners duly availed the opportunity to make their submission before the adjudicating authority admitting the service tax liability of the firm?
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> 3) Whether the Hon'ble CESTAT was correct in holding that the demand for the period from April, 2000 to October, 2003 is hit by limitation since extended period for issuing show cause notice is not

available to the Department, while in fact the demand was raised under the erstwhile Section 73 (1) (a) of the finance Act, 1994, which is applicable to the period of demand and in terms of which mere omission or failure on the part of the assessee to make a return for any prescribed period or to disclose wholly or truly all of the material facts required for verification of the assessment would attract the extended period of five years for issuing a show cause notice for recovering the amount that escaped assessment?"

2. The brief facts that led to the batch of appeals are as under :-

The appellant/Department, on the basis of specific intelligence gathered, found that certain Rent-a-Cab operators are renting out cabs to various establishments and persons and are evading payment of service tax by not registering with the Excise Department and have failed to pay the service tax. The matter was investigated by the officers of the Central Excise Head Quarters Anti Evasion, Trichy. From the details gathered from Oil & Natural Gas Corporation (for short 'ONGC'), Karaikal, Chennai Petrochemicals Ltd. (for short 'CPCL'), etc., it was found that one Lakshmi Travels, No.36/1, 1$^{st}$ floor, Kennadiar Street, Karaikal, have entered into comprehensive periodical contract with these two companies for providing cab services on rent basis and received payment to the tune of Rs.32,54,751/= from ONGC and Rs.42,19,567/= from CPCL for the period 2000-2001 to 2003-2004. The services rendered by M/s.Lakshmi Travels, a partnership firm, under the contract agreement with ONGC and CPCL falls under the category of Rent-a-Cab services as per Section 65 (91) of the Finance Act, 1994.

3. In the course of investigation, summons were issued to the last known address of Lakshmi Travels for production of records. The summons issued to the address of the firm and the address of one of the partners returned with endorsement 'No such address'. However, on 21.10.05, statement was recorded from N.Muruganantham, one of the partner of Lakshmi Travels, who, inter alia, deposed that he was one of the partners of the firm upto October, 2003 and after October, 2003, went out of the partnership and submitted application in Form-5 with the Registrar of Companies, Nagapattinam. Lakshmi Travels having not registered with the department and since failed to pay service tax, as admitted by the said Muruganantham, and based on records received from ONGC and CPCL, the Department came to the conclusion that Lakshmi Travels is engaged in the business of Rent-a-Cab from the year 1998 onwards. They received monthly hire charges, but they failed to pay service tax despite showing the details for

the purpose of income tax consequent to deduction of TDS. Accordingly, the following charges were levelled against Lakshmi Travels and, consequently, demand was made :-

"9. Whereas it appears that Lakshmi Travels

i. Have willfully not paid service tax for the services rendered by them with an intention to evade payment of tax;

ii. Have intentionally failed to file the statutory ST-3 returns though they have been providing taxable service during the said period;

iii. Have contravened the provisions of

a. Section 68 of Chapter V of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994 inasmuch as they have willfully not paid service tax on the charges received by them for the services rendered to ONGC and CPCL;

b. Section 69 of Chapter V of the Finance Act, 1994 read with Rule 4 of the Service Tax Rules, 1994, inasmuch as they have willfully not registered with the department;

c. Section 70 of Chapter V of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, inasmuch as they have intentionally failed to file the statutory ST-3 returns for the period from April, 2000 onwards on the due dates;

iv. Are liable for action under erstwhile Section 73 (a) /73 (1) (a)/present Section 73 (1) of Chapter V of the Finance Act, 1994;

v. Are liable for penalty under

a. Section 78 of Chapter V of the Finance Act, 1994, inasmuch as they have willfully suppressed and concealed the value of taxable service rendered by them;

b. Section 76 of Chapter V of the Finance Act, 1994, inasmuch as they have willfully evaded payment of the service tax on the taxable services rendered by them;

c. Section 77 of Chapter V of the Finance Act, 1994, inasmuch as they have failed to file the prescribed ST-3 returns or have not furnished returns as prescribed in terms of Section 70 of Chapter V of the Finance Act, 1994;

vi. Are liable for payment of interest under Section 75 of Chapter V of the Finance Act, 1994.

10. Now, therefore, Lakshmi Travels, No.36/1, First Floor, Kennadiar Street, Karaikal-609 602 are hereby required to show cause to the Deputy Commissioner of

Central Excise, Karaikal Division, No.1, Noolkadai Street, Karaikal, within 30 days from the date of receipt of the notice as to :

i. Why the service tax of Rs.3,87,881/- (Rupees Three Lakhs Eighty Seven Thousand Eight Hundred and Eighty One only) as detailed in Annexure-A to this notice should not be demanded from them for the period from April, 2000 to October, 2003 under Section 73 (1) (a)/erstwhile Section 73 and proviso to Sub-section 1 of Section 73 of Chapter V of the Finance Act, 1994;

ii) Why penalty should not be imposed on them under

a. Section 76,

b. Section 77 and

c. Section 78 of the Chapter V of the Finance Act, 1994;

iii) Why interest should not be demanded from them under Section 75 of Chapter V of the Finance Act, 1994 at the appropriate rate from the date following the stipulated date for the payment of service tax."

4. In the show cause notice, reliance was placed on the below mentioned documents, which are extracted hereunder for better clarity :-

"17. Reliance is placed on the following documents/materials:

1. Letter of Acceptance Ref:CAN:01:048 dated 13.04.1998 addressed to Lakshmi Travels, 130/1, Pallivasal Street, Thiruvarur.

2. Letter of Acceptance Ref:CAN:01:048 dated 05.06.01 addressed to Lakshmi Travels, 36/1, First Floor, Kennadiar Street, Karaikal.

3. Letter of Acceptance Ref:CAN:01:048 dated 07.09.2003 addressed to lakshmi Travels, 36/1, First Floor, Kennadiar Street, Karaikal.

4. Ledger extract of Lakshmi Travels in the books of CPCL.

5. Letter No.ONG/KKL/F&A/01/2005/02 dated 21.09.2005 of ONGC, Karaikal enclosing copies of TDS Certificates for the years 2000-01 (Xerox copies) containing details of payments made to Lakshmi Travels.

6. Statement of Shri. N.Muruganantham, Partner of Lakshmi Travels dated 21.10.2005."

5. A copy of the show cause notice was also marked to N.Muruganantham and G.Sanjeevi and in the order-in-original, there is also a reference to another show cause notice dated 16.10.06. The

assessees do not dispute the said show cause notice. On the contrary, we find reference to the same in internal Page-5 of the order-in-Original that notice dated 16.10.06 was issued to Govindaraj, one other partner of Lakshmi Travels.

6. Despite series of notices given, no reply was filed and, therefore, a personal hearing was fixed on 8.11.06, which was adjourned to 17.11.06 and finally to 23.11.06. The hearing was conducted and it has been recorded that the assessees admitted their share of tax liability of one-third each and agreed to pay their share within thirty days. For better clarity, the said portion is extracted hereinbelow :-

> "During the course of PH held on 23.11.2006 Shri.N.Muruganandam and Shri.G.Govindaraj jointly appeared before me and has stated that Shri.G.Sanjeevi as a managing partner was managing the entire business of M/s.Lakshmi Travels and they were not aware where their vehicles were sent for hiring. Further they have stated that they were not aware that Shri.G.Sanjeevi has not paid any service tax and informed that Shri.G.Sanjeevi has obtained refunds of Income Tax stating that he is the sole proprietor of M/s.Lakshmi Travels. However they have admitted that their share of tax liability of 1/3 each and agreed to pay within 30 days."

7. Muruganantham and Govindaraj have, however, stated in the letter dated 27.11.06 that it was Sanjeevi, who was operating Lakshmi Travels as one man show and they have nothing to do with the business of Lakshmi Travels, Karaikal and they requested that they should not be mulcted with service tax liability. In fact, the stand of Muruganantham and Govindaraj was that Sanjeevi was the master-mind and they should be left out except for the purpose of sharing the tax liability to an extent of one-third each, which they admitted and we have referred to above.

8. The nature of business activity of the three partners of the firm and the way the business was managed, have been discussed in the adjudication order, whereinafter the adjudicating authority has concluded that there is a clear case of deliberate evasion of payment of service tax. The adjudicating authority has further recorded the undertaking given by the partners to share the liability consequent to the closure of business. For better clarity, the relevant portion of the order is extracted hereinbelow :-

> "As the M/s.Lakshmi Travels is no more in existence and all the three partners in their personal appearance agreed to share tax liability equally.

This is a peculiar case coming up for adjudication before me. M/s.Lakshmi Travels is a partnership concern consist of three partners S/Shri G.Sanjeevi, N.Muruganantham and G.Govindaraj as per the registered partnership deed dated 10.11.1996. As per the said deed Shri.G.Sanjeevi is termed as Managing Partner and given powers to manage the day-to-day affairs of the company. All the partners have contributed equal amount of Rs.50,000/- as capital and partners have spared vehicles for the purpose of running the business. The other two partners S/Shri N.Muruganantham and G.Govindaraj were also entitled for 1/3 of the share in the business and have got equal right in day-to-day administration, financial matters of the business. When all the three partners have the equal rights to decide the financial matters and are having equal share and has spared their vehicles for conduct of business all the three partners have equal right to adhere to the legal formalities to be observed and payment of Government dues in time. Hence plea of Shri. N.Muruganandam and G.Govindaraj that they have not aware that Shri G.Sanjeevi has not taken out service tax registration and not paid the service tax to the Department and where their vehicles were sent for hiring etc., is not acceptable. This is nothing but an after thought and to get out of their moral responsibilities. But as a managing partner Shri. G.Sanjeevi carries more responsibilities in payment of service tax at appropriate time itself. When the partnership deed itself provides for equal share of 1/3 among partners, proceeding against the all three partners to recover the Govt. dues is in order. The partners cannot escape from the legal responsibilities as envisaged under the provisions of Indian Partnership Act wherein the Act itself provides unlimited liabilities on their shoulders. Any sketch of information or grounds or allegation thrown on any one or more partners will not entitled the other partners from legal responsibilities. Hence all the three partners on which show cause notices were issued are liable to clear their 1/3 of the tax liabilities which works out to Rs.1,29,294. More so during the period in question when demand is payable to M/s.Lakshmi Travels, all the 3 partners were very much covered by the registered partnership deed. When the partners Shri. N.Muruganantham and Shri.

G.Govindaraj can cleverly unearthen the income tax return refund order filed by the other partner with Income Tax Department, in order to make an attempt from getting out of the tax responsibility, they being educated persons can understand the tax provisions of Indian Partnership Act, service tax rules and would have made voluntary compliance if not earlier or at least on receipt of SCN. It is very painful to note that even though all the partners have agreed to pay 1/3 of their tax liability, they have not done the same till today.

From the xerox copy of the Income Tax Return and connected papers submitted by Shri. G.Sanjeevi to the Income Tax Department, even though he was only a managing partner of M/s.Lakshmi Travels, he has to do so as and sole proprietor, shows his criminal mind in getting tax relief by cook or crook. But being such a perverted intelligence, he has deliberately avoided payment of service tax to the Department in time. Keeping in mind of the above observance I feel it proper to impose more penal on Shri. G.Sanjeevi in public interest and also caution not to play any trick with Government Department in future."

9. The adjudicating authority, on the other hand, while holding that the assessee in question has rendered taxable service, failed to register and follow the service tax procedure and, but for the investigation by the Department, the evasion would not have come to light. The adjudicating authority, therefore, held that the assessees are liable for payment of tax and consequential penalty under the provisions of Chapter V of the Finance Act, 1994 under the head "Rent-a-Cab Services". In the order, strangely, the adjudicating authority withdrew the show cause notice issued insofar as the firm, Lakshmi Travels is concerned, primarily on the ground that the firm was no more in existence, but, however, confirmed the demand on the basis of the undertaking given by the partners to pay the duty demand and passed the following order :-

"1. Show Cause Notice in the name of M/s.Lakshmi Travels is treated as withdrawn.

2. I demand service tax of Rs.3,87,881 under Sec. 73 (1) (a) erstwhile Section 73 of Chapter V of Finance Act, 1994 on all three partners of M/s.Lakshmi Travels.

3. I demand service tax amount Rs.1,29,294/- being 1/3 share of Shri G.Sanjeevi.

4. I demand service tax amount Rs.1,29,294/- being 1/3 share of N.Muruganantham.

5. I demand service tax amount Rs.1,29,294/- being 1/3 share of G.Govindaraj.

6. I do not propose to impose any penalty under Section 76 & 77 of Finance Act 1994 in view of the power conferred under Section 80 of Finance Act 1994.

7. I impose a penalty of Rs.1,00,000/- (Rupees One Lakhs only) under Section 78 of the Finance Act, 1994 to Shri G.Sanjeevi, Managing Partner.

8. I impose a penalty of Rs.50,000/- (Rupees Fifty Thousand only) under Section 78 of the Finance Act, 1994 to Shri N.Muruganantham, Partner.

9. I impose a penalty of Rs.50,000/- (Rupees Fifty Thousand only) under Section 78 of the Finance Act, 1994 to Shri G.Govindaraj, Partner.

10. Interest at appropriate from S/Shri G.Sanjeevi, N.Muruganandam and G.Govindaraj under Section 75 of Finance Act, 1994."

10. All the three partners received the order and filed three appeals before the Commissioner (Appeals) against the Order-in-Original dated 30.11.06. The Commissioner (Appeals) heard all the three appeals in Appeal Nos.17, 18, and 19/2007 and vide Order-in-Appeal No.25/2007 dated 2.4.07, upheld the order passed by the adjudicating authority and rejected the appeals filed by the partners.

11. In the meanwhile, the Commissioner (Appeals), on going through the adjudication order, realizing that the show cause notice as against the firm has been withdrawn, to correct the error, issued a show cause notice by virtue of powers conferred under Section 84 of the Finance Act, 1994, which reads as under :-

"84. Revision of Orders by the Commissioner Central Excise.

(1) The Commissioner of Central Excise may call for the record of a proceeding under this Chapter which has been taken by the Central Excise Officer subordinate to him and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Chapter, pass such order thereon as he thinks fit.

(2) No order which is prejudicial to the assessee shall be passed under this section unless the assessee has been given an opportunity of being heard.

(3) The Commissioner Central Excise shall communicate the order passed by him under sub-section

(1) to the assessee, the Central Excise Officer and the Board.

(4) No order under this section shall be passed by the Commissioner of Central Excise in respect of any issue if an appeal against such issue is pending before the Commissioner of Central Excise (Appeals).

(5) No order under this section shall be passed after the expiry of two years from the date on which the order sought to be revised has been passed."

12. Accordingly, show cause notice was issued on the firm by the Commissioner on the ground that the order dated 30.11.06 passed by the Assistant Commissioner is not legal insofar as it withdrew the show cause notice issued in the name of Lakshmi Travels and to that extent it should be modified and, consequently, the demand of service tax on Lakshmi Travels should be restored with interest and penalty.

13. The show cause notice was issued invoking Section 84 of the Finance Act on 2.11.07 and was served on all the three partners and they responded to the notice and there again the Commissioner passed an order in Revision No.5/08 dated 22.2.08 confirming the demand of Rs.3,87,881/= on Lakshmi Travels and also held that the tax liability should be shared among the three partners equally against which appeals appears to have been filed and the details of the appeals are as follows :-

a) Against Order-in-Appeal No.25/00 dated 2.4.07 dismissing individual partners appeal, the partners filed Appeal ST Nos.76, 77 and 139 of 2007;

b) Against Order-in-Revision No.5/08 dated 22.2.08, three appeals, viz., ST Nos.110, 111/2008 and 354/2009 were filed.

14. From the cause title of the order of the Tribunal, we find that the appellants are arrayed in the following manner and one of the appellant is Lakshmi Travels :-

"01. G.Govindaraj
02 & 04. N.Muruganantham
03. G.Sanjeevi
05. G.Govindaraj
06. M/s.Lakshmi Travels .. Appellants

- Vs -

Commissioner of Central Excise
(Service Tax), Trichy. .. Respondent

15. The Tribunal, adverting to the various proceedings as above, came to hold that mere marking of the show cause notice dated

21.10.05 and 16.10.06 to the partners without any proposal to recover tax from them is bad as marking of the copies is not a substitute for show cause notice against the partners. Consequently Appeal Nos.76, 77 and 139 of 2007 were allowed. The relevant portion of the order is extracted hereunder :-

> "3. I have heard both sides. I see force in the submission of the three partners that no demand can be confirmed against them in the absence of any show-cause notice proposing recovery of tax from them. Marking of the copies of the show-cause notice dated 21.10.2005 and October, 2006 to the partners without raising any demand in the notice for recovery from the three partners is not sufficient and the marking of the copy is not a substitute for the show-cause notice against the individuals. I, therefore, set aside the demands confirmed against the partners vide Order-in-Appeal No.25/2007 dated 02.04.2007 and allow Appeal Nos.ST/76, 77 & 139/2007."

16. In respect of the other three appeals against Order-in-Revision No.5/08, the Tribunal went on the premise that the claim is barred by limitation because of the knowledge of the Department even as early as December, 2001 relating to the activities of Sanjeevi. Therefore, the Tribunal held that larger period of limitation will not lie. On the plea of time bar, the appeals were allowed by the Tribunal by passing the following order:-

> "4. Coming to Order-in-Revision No.05/2008, the contention of M/s.Lakshmi Travels that the demand is barred by limitation for the reason that notice dated October, 2005 covers the period from 2000-01 to 2003-04 (upto October, 2003) which notice is beyond the statutory period of limitation and the extended period is not available to the department in the light of the fact that even as far back as December, 2001, the excise authorities had knowledge that Shri. G.Sanjeevi one of the partners of M/s.Lakshmi Travels had neither registered himself with the Central Excise Department nor paid the appropriate service tax and, therefore, the appellants cannot be held guilty of suppression so as to apply the larger period of limitation against them has merit. As the Department was in the knowledge of non-registration and non-payment of service tax by M/s.Lakshmi Travels (partnership firm), the demand is hit by time bar and is accordingly set aside.

5. Order-in-Revision No.05/2008 is set aside and Appeal Nos.ST/110 & 111/2008 and ST/354/2009 are allowed."

17. Aggrieved by the order of the Tribunal, the appellant/Department is before this Court by filing the above appeals, primarily contending that Section 25 of the Partnership Act fastens liability on every partner, jointly and severally, liable for all the acts of the firm while he is a partner. To buttress this argument, reliance is placed on the decision of this Court in Sinnaraju Chettiar - Vs - Union of India (2000 (126) ELT 522 (Mad.)).

18. Learned counsel for the Department pleaded that the original show cause notice was issued on the firm in terms of Section 25 of the Partnership Act as the partners are bound and liable to pay the service tax dues and they have, in fact, agreed to share the liability in the statement given before the concerned authority. Even assuming, without admitting, that the adjudicating authority has withdrawn the show cause notice issued on the firm, the defect has been cured by the suo motu revision order of the Commissioner (Appeals) in Revision No.5/08 dated 22.2.08 and, thereby, the demand against the firm stands restored and the liability of the partners stand established. There is no need for a separate show cause notice to each one of the partners in accordance with the provisions of Section 25 of the Partnership Act r/w Rule 26 of the Partnership Rules.

19. Insofar as limitation is concerned, it is the plea of the learned standing counsel for the Department that what has been recorded in the adjudication order is in relation to activities of certain Rent-a-Cab operators and reference is made to one Sanjeevi. The address of Sanjeevi is not in any way relatable to the address of the firm, viz., Lakshmi Travels. There is no link between the two addresses and, therefore, the plea of knowledge in December, 2001, raised by the assessees, has no legs to stand.

20. Per contra, Mr.M.N.Bharathi, learned counsel appearing for the respondents raised a preliminary objection on the ground that the tax liability falls within the parameters of the National Litigation Policy and, therefore, the appeals at the behest of the Department is not maintainable. Secondly, it is contended that since the show cause notice against Lakshmi Travels has been withdrawn and no notice has been issued to the partners, the same is fatal to the Department, which cannot be cured by a subsequent notice issued by the Commissioner (Appeals) under Section 84 of the Finance Act, 1994. Thirdly, the plea of suppression raised by the Department has been negatived by the Tribunal as is evident from the order of the

adjudication, since the facts disclose that the Department had knowledge about the activities of G.Sanjeevi and, therefore, the proviso to Section 73 (1) cannot be invoked.

21. Heard the learned standing counsel appearing for the appellant/Department and the learned counsel appearing for the respondents/assessees and perused the materials available on record.

22. On the preliminary objection raised as to the maintainability of the appeals, the National Litigation Policy of the Government issued by the Ministry of Finance, Department of Revenue, Central Board of Excise & Customs vide Instructions dated 20.10.2010 in F.No.390/Misc./163/2010-JC, mandates that no appeal shall be filed to the High Court against the order of the Tribunal where the tax demand is below Rs.2 Lakhs. In the case on hand, the tax demand on the firm, viz., Lakshmi Travels is to the tune of Rs.3,87,881/=, which is above the threshold limit of Rs.2 Lakhs fixed for filing the appeal. The tax demand clearly falls outside the purview of the said notification. The only question is by splitting up the liability between the partners of the firm, whether the said notification would apply to the facts of this case. For better appreciation, the relevant portion of the Notification is extracted hereunder :-

> "5. The Board has decided that appeals in the Tribunal shall not be filed where the duty involved or the total revenue including fine and penalty is Rs.1 Lakh and below. Similarly, in the case of High Courts, appeals should not be filed in cases where the duty involved or total revenue including fine or penalty is Rs.2 Lakhs and below. While deciding the thresholds mentioned above the duty involved shall be the decisive element. For example, in a case involving duty of Rs.1 Lakh with mandatory penalty of Rs.1 Lakh besides any other penalty imposed under the relevant provisions of Law, no appeal shall henceforth be filed in the Tribunal as the duty involved is within the monetary limit of Rs.1 Lakh. Similarly, if the duty involved in a case is Rs.2 Lakhs with equal mandatory penalty and any other penalty imposed under the Law in force at the relevant time, no appeal shall be filed before the High Court."

23. From a reading of the above notification, it is clear that the threshold limit of Rs.2 Lakhs is the decisive element for the purpose of deciding whether appeal should be filed or not. In the case on hand, the tax demand is over and above Rs.2 Lakhs fixed in the above notification. Further, the notification only speaks about

the total demand and not splitting up of the same between two/more entities. Such being the case, the demand being above Rs.2 Lakhs, this Court is unable to accept such a plea, as the primary liability of service tax is on the firm, represented by its partners, which has been confirmed as against the firm in a sum of Rs.3,87,881/=. This Court is of the considered view that the notification referred to above will not have any application to the case on hand. Accordingly, the 1st substantial question of law is answered in favour of the appellant/Department and against the respondent/assessees.

24. The next contention of the Department is that the Tribunal erred in holding that marking of notice to the partners is not sufficient and not substitute for notice to the individuals. It is contended that the Tribunal, on a wrong premise, held that the show cause notice should be sent to individual partners as well in respect of the affairs of the firm. There cannot be any dispute on the point that every partner is liable jointly and severally with all other partners for all acts of the firm done while he is a partner. The key word is "all acts of the firm" and, consequently, the liability of the partners jointly and severally along with other partners. In this case, the original show cause notice is on the partnership firm, which came to be erroneously withdrawn, on the statement made by the partners that it is no more in operation and also on the ground that the partners have agreed to share the liability. However, that error came to be corrected by the Commissioner in the suo motu revision order dated 22.2.08 restoring the proceedings and demand made on the firm. The Tribunal having misread the provisions of Section 25 of the Partnership Act, fell in error in holding that the show cause notice should be issued on each one of the individuals.

25. In this connection useful reference can be made to the decision of this Court in Sinnaraju Chettiar - Vs - Union of India (2000 (126) ELT 522 (Mad.)) wherein this Court held as under :-

> "5. The general rule as to a person's liability as a partner laid down in Section 25 of the Partnership Act confines that liability to all acts of the firm done while he is a partner. This is on the principle of agency. The various grounds on which a person may incur liability as a partner are :
>
> (i) A partner may become liable for an act done by another partner or an agent on behalf of the firm but not binding on it if the act has subsequently been ratified by all the partners; (ii) A partner is liable for all the acts of the firm done while he is a partner. This would include liability arising from contracts as well as torts; (iii) A partner would be

liable for the acts of his co-partners purporting to be done on behalf of the firm.

Section 25 lays down the general rule that every partner is liable for all the acts of the firm done while he is a partner and that the liability is both joint and several. The expression 'act of a firm' means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm. The general rule as to a partner's liability for acts of the firm, based as it is on the principle of agency properly confines that liability only to acts of the firm done while he is a partner. What is required to bring a case under this section is that the act of the firm in respect of which liability is sought to be enforced against a party must have been done while he was a partner. If an act is binding on the firm, every partner will be liable for it. This is irrespective of the fact that a partner was not known as a dormant or a secret partner. The true principle of partnership liability being the existence of an implied agency, it follows that every partner should be liable for all acts of the firm.

6. Section 26 provides for the liability of the firm for wrongful acts of a partner in general. The general rule is that a firm is liable for any loss or injury caused to a third party by the wrongful acts or omissions of a partner if they were done by him while acting (a) in the ordinary course of the partners and (b) with the authority of the partners. To bring a case within the purview of Section 26, it is necessary to show either that the act of the partner was authorized by his co-partners or that in doing it he was acting in the ordinary course of the business of the firm. It is not incumbent on the party seeking to charge the firm for the wrongful act of a partner to show that the particular act is within the usual course of dealing or practice of others carrying on a similar business. What is essential is that the act must be shown to have been done by a partner in the ordinary course of the business of the particular firm.

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9. Mr. Venkatachari cited some authorities in support of his contention that notice to individual partners was necessary before the firm was dealt

with. None of the authorities is in point. In Syed Cassim v. Collector of Central Excise - 1962 II M.L.J. 499 the principle laid down is that the penal provision in the Sea Customs Act should be construed strictly and that the authorities issuing a show cause notice should comply strictly not only with the letter of the law but also with the spirit of it. In that case, the notice merely mentioned the statutory provision without mentioning the facts on the basis of which certain contravention was sought to be made out. It was held that the person was entitled to be told that he should show cause against the imposition of such penalty. In Devichand v. Collector, Central Excise 1965 11 A.W.R. 102 the principle laid down is that before passing the order of confiscation of the goods or imposition of penalty, a reasonable opportunity of being heard to the person concerned should be given. There is no controversy about this principle in the instant case, because all the prescribed notices were given to the firm and were acknowledged by the managing partner and were also replied to. The decision in Collector of Customs v. Sitaram, 1999 (110) E.L.T. 292 (S.C.) = (1966) 2 S.C.R. I was concerned with the meaning of the expression "in any way concerned in or in any manner dealing with any goods" occurring in Section 167(81) of the Sea Customs Act, 1878. That is not relevant for the purpose of this case.

10. It is not as though the other partners were not aware of the imposition of penalty on the firm. The first petitioner while he addressed the Deputy Tahsildar of Pondicherry on 28-1-1970 who took action for recovery of the penalty, admitted that the third respondent had told him that penalty had been imposed, though he qualified that statement by saying that the information was conveyed to him in a vague manner without particulars about the amount payable and the circumstances under which the levy was made. His explanation was that he did not attach any importance to that reference, because, according to him, the third respondent was frequently asking financial calls with a view to exploit him. This explanation is not believable. On the admission of the first petitioner it is clear that the third respondent, as the managing partner, also brought to the notice of the other partners that the firm had been dealt with for the importation in question and

that penalty had been levied. The other partners took no action to absolve themselves from liability until they were proceeded against to recover the balance of the penalty.

26. Section 25 of the Partnership Act clearly mandates that all the partners are jointly and severally liable for all acts of the firm done while he is a partner. Further, in the case on hand, notice has been issued on the firm, which has also been marked to all the partners. It is also borne out by record that all the partners have accepted the liability and undertaken to make good the demand raised against the firm. Such being the case, correcting the technical error by the Commissioner (Appeals) by issuance of notice to the firm under Section 84 of the Finance Act by marking copies of the notice to the partners would in no way be termed as insufficient notice on the partners. All the partners having been well aware of the demand on the firm and having undertaken to make good the demand before the adjudicating authority, now, cannot take a plea that they could not contest the said cause due to insufficient notice. In the above factual background, the plea as taken by the partners of the firm cannot be sustained and the said contention is liable to be rejected. In view of the aforesaid reasoning, the 2nd substantial question of law is answered in favour of the appellant/Department and against the respondent/assessees.

27. This leads us to the last question as to the plea of limitation and the plea of the respondents/assessees that proviso to Section 73 (1) (a) cannot be invoked. The Tribunal merely went by certain intimation letter of the Superintendent of Central Excise, Karaikal II Range to the General Manager, ONGC, wherein certain details of Rent-a-Cab operators have been sent to ONGC with a direction to call upon them to register under the provisions of the Finance Act. Even as per this statement recorded in the adjudication order, we find there is mention about one G.Sanjeevi of No.91, Kamatchi Josier Street, Kumbakonam. However, it is clear that the said address does not have anything to do with the address of Lakshmi Travels, as the address of Lakshmi Travels is 36/1, 1st Floor, Kennadiar Street, Karaikal, to which address the show cause notices were sent by the. Therefore, the plea of knowledge in respect of activities of Lakshmi Travels being attributed to the Department has no legs to stand. The Tribunal clearly was in error in comparing the activities of one Sanjeevi to the activities of the firm, Lakshmi Travels, Karaikal, which is in a totally different place altogether. Therefore, the reasoning given by the Tribunal, on the plea of limitation is fallacious and not tenable in law. Accordingly, the 3rd substantial question of law is also answered in favour of the appellant/Department and against the respondent/assessee.

28. In the result, all the appeals are allowed setting aside the order dated 24.08.2009, passed by the Tribunal. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

GLN

To

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2. Customs, Excise & Service
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+1cc to Mr.Ramesh Venkatachalapathy, Advocate, S.R.No.35230

C.M.A. NOS.1175 TO 1178 OF 2010

PUR(CO)
CA(07/10/2015)