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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Order: July 24, 2018

+ SERTA 20/2018, C.M. APPL. No. 29038-29039/2018
N & N CHOPRA CONSLTANTS PVT. LTD.

..... Appellant

Through: Mr. Karan Sachdev, Mr. Yogendra
Aldak, Mr. Kunal Kapoor, Advocates

versus

PRINCIPAL COMMISSIONER, GOODS & SERVICE TAX
&CENTRAL EXCISE,DELHI EAST

..... Respondent

Through: Mr. Harpreet Singh Senior Standing
Counsel

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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S. RAVINDRA BHAT, J. (ORAL)

The question which the assessee urges in this appeal under Section 35G of the Central Excise Act, 1944, as made by virtue of Section 83 of the Finance Act, 1994, is that the multiple penalties imposed in the circumstances of the case were excessive.

The assessee is engaged in providing commercial coaching and training services and therefore, he is subject to service tax levy under the Finance Act, 1994. It was registered as a service tax assessee and it appears to have not paid up his liability for the period 09.09.2004 to 31.03.2008, however, he filed its returns stating that there was no

service tax liability. The Income Tax Search and Seizure proceedings apparently triggered investigations by the Service Tax Authorities. The Assessee in these circumstances offered to pay service tax dues and filed returns on 02.03.2009. In the meanwhile, a show cause notice was issued on 23.06.2009. For a later period, the assessee again approached the Service Tax Authorities, conceding its liability and offering to pay up its dues. The show cause notice culminated in order in original dated 06.01.2012. Besides the tax liability, the Learned Commissioner (Adjudication), who adjudicated show cause notice, ordered, imposing penalties. The relevant part of the extract of the Commissioner's order reads as follows:

“ORDER

- i. *I confirm the demand of service tax amounting to Rs.26,36,988/- (Rupees twenty nine lakh thirty six thousand nine hundred eighty eight only) against the assessee i.e. M/s. N.N. Chopra Consultant Pvt. Ltd. on the value of taxable service amounting to Rs.2,44,74,902/- under Commercial training and Coaching Service and the same be recovered from them under Section 73(1) read with section 68 of the Act;*
- ii. *I confirm the demand of Cess amounting to Rs.58,740/- (Rupees fifty eight thousand seven hundred forty only) on the amount of service tax shown in para 70.1 against them under Section 95 of the Finance (No.2) Act, 2004 read with Section 66 of the Act;*
- iii. *I confirm the demand of SHEC amounting to Rs.29,370/- (Rupees twenty nine thousand three hundred seventy only) on the amount of service tax shown in para 70.1 against them under Section 140 of the Finance Act, 2007;*

- iv. *Interest at the appropriate rate on the above amounts is also chargeable from them under Section 75 of the Act on the aforesaid amount till the date of payment of the service tax;*
- v. *I confirm the demand of service tax amounting to Rs.4,64,867/- (Rupees four lakh sixty four thousand eight hundred sixty seven only) against the assessee i.e. M/s. N&N Chopra Consultant Pvt. Ltd. on the value of taxable service amounting to Rs.43,53,501/- under Business Auxiliary Service and the same be recovered from them under Section 73 (1) read with Section 68 of the Act;*
- vi. *I confirm the demand of Cess amounting to Rs.8,165/- (Rupees eight thousand one hundred sixty five only) on the amount of service tax shown in para 70.5 against them under Section 95 of the Finance (No.2) Act, 2004 read with section 66 of the Act;*
- vii. *I confirm the demand of SHEC amounting to Rs.1,074/- (Rupees one thousand and seventy four only) on the amount of serviced tax shown in para 70.5 against them under Section 140 of the Finance Act;”*

The assessee's appeal to the Tribunal under Section 35E and 86 of the Finance Act, 1994, was rejected by the impugned order. The Tribunal declined to interfere with the findings and penalties imposed by the Commissioner rejecting the contention that in the circumstances of the case, the contention about the excessive imposition of penalties both under Section 76 and 78 of the Finance Act, 1994. The appellant urges that the Tribunal fell into error, in upholding the two penalties and relies upon the judgments in *M/s. Raval Trading Company vs. Commissioner of Service Tax – 2016* (42) STR 210 (Guj) and the decision of the Hon'ble Punjab & Haryana

High Court-in the case of *First Flight Courier Ltd.* - 2011 (22) STR 622 (P&H) and *Commissioner of Central Excise v. M/s. Pannu Property Dealers, Ludhiana* (STA No. 13 of 2010 decided on 12-7-2010), 2011 (24) STR 173 (P&H). It is submitted that the appellant had deposited the additional amount of Rs.5,06,270/- after the show cause notice was issued and had paid Rs.34 lakhs prior to that. Given these facts, he states that imposition of any penalty under Section 76 was itself unjustified.

The facts of this case, in the opinion of this court, notes that the assessee was aware about its service tax liability; despite this knowledge, it filed its returns claiming that no liabilities were attracted. When it smelt investigation and adverse orders, it apparently approached the service tax authorities and deposited the amounts which they were admittedly liable to pay. Such being the case of foreknowledge, in the opinion of the court, itself is an important factor that ought to have been and was taken into account by the lower revenue authorities. Hence, foreknowledge lead to the imposition of recovery of dues assessed as well as imposition of the penalty under Section 78. The court is of the opinion that the invocation of Section 78 cannot be faulted with having regard to the facts of this case. Depositing the amount due, by the appellant, before issuance of show cause notice *per se* does not absolve the appellant of its responsibility to file the returns, since the option of imposing other penalty under Section 76 was exercised. Being a matter of discretion, its judicious exercise, is all that is in question. Having regard to the fact of concurrent findings, we are of the opinion that the exercise of

such discretion reserving imposition of Section 76 in the circumstances, does not call for interference.

The appellant's contention with respect to retrospective effect of the amendment of Section 78 (which makes the imposition of penalties under Section 76 and 78 mutually exclusively) are unsubstantial as this court in *M/s. Bajaj Travels Limited vs. Commissioner of Service Tax* (CEAC 6/2009, decided on 03.08.2011) 2012 (25) STR 417 held that the amendments are prospective in nature and cannot come to the aid of an assessee for past period.

In view of the aforesaid observations, the appeal filed by the appellant is dismissed and disposed of as such.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 24, 2018
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