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C.M.A.No.487 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

DATED : 27.09.2024

THE HONOURABLE **MR.JUSTICE R.SURESH KUMAR**
and
THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.M.A.No.487 of 2018
and C.M.P.No.4382 of 2018

M/s.Karur Vysya Bank,
Central Office, Erode Road,
Karur 639 002.

... Appellant

vs.

The Commissioner of Central Excise,
No.1, Williams Road, Cantonment,
Trichy.

... Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 83 of the Finance Act, 1994 read with Section 35G of the Central Excise Act, 1944.

For Appellant : Ms.Krithika Jaganathan
for M/s.Lakshmi Kumaran

For Respondent : Mr.S.Gurumoorthy



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Senior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN,J.**)

This Civil Miscellaneous Appeal is filed under Section 83 of the Finance Act, 1994 read with Section 35G of the Central Excise Act, 1944 against the Final Order No.40871/2017 dated 02.06.2017 passed by the Customs, Excise and Service Tax, Appellate Tribunal, Chennai.

2. By the impugned order, the Division Bench of the Tribunal has rejected the Appeal No.ST/210/2008 of the appellant dated 02.06.2017. This appeal is confined only to the challenge to the impugned order dismissing the appeal of the appellant in so far as it upholds levy of penalty on the appellant under Section 78 of the Finance Act, 1994.

3. At the time of admission, the following substantial questions of law were framed for being answered :-

"(1) Whether in the facts and circumstances of the case,



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the Hon'ble Tribunal has erred in upholding invocation of extended period of limitation in terms of proviso to Section 73 of the Finance Act, 1994 when none of the ingredients stipulated therein have been satisfied?

- (2) Whether the Hon'ble Tribunal was right in confirming suppression for mere non-declaration of details which are not required under law to be disclosed?
- (3) Whether the Hon'ble Tribunal was right in holding that there is non-disclosure of the disputed receipts in their returns required to be filed under law, at least under protest, when there is no provision under law for such disclosure?
- (4) Whether in facts and circumstances whether the Hon'ble Tribunal was right in upholding imposition of penalties even in a case where there is no positive finding of suppression?
- (5) Whether in the facts and the circumstances of the case, the Hon'ble Tribunal has erred in upholding simultaneous imposition of penalties under Sections 76, 77 and 78 of the Finance Act, 1994?
- (6) Whether in the facts and circumstances of the case, the Hon'ble Tribunal has erred in not extending the benefit of Section 80 of the Finance Act, 1994 even though the Appellant had a reasonable cause for non-payment of service tax?"

4. The facts are not in dispute. The appellant herein is a provider of Banking Service within the meaning of Section 65 (12) of the Finance Act, 1994 and was liable to pay tax under Section 65(105) (zm) of the



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Finance Act, 1994.

5. The appellant appears to have entertained bonafide view that the appellant was not liable to pay service tax on the amounts collected towards (a) cheque return charges, (b) minimum balance charges and © charges collected towards non-maintenance of Quarterly Average Balance.

6. These amounts were levied and collected by the appellant in accordance with Reserve Bank of India in its circular No DBOD.Dir.BC53/13.10.00/2002-03 dated 26.12.2002 and RBI Notice No.RBI/2004/98 bearing Reference DBS.CO.FGV(F)No.1306/23.08.001/2003-04 dated 15.03.2004.

7. The dispute pertains for the period between 10.09.2004 and 31.07.2007 long before clarification of the RBI dated 20.11.2014 bearing Reference DBR.Dir.BC.No.47/13.03.00/2014-15. The appellant entertained a view that the appellant was indeed not liable to pay service tax on the above three amounts collected as penal charges from its



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customers pursuant to the above directions of the RBI. Therefore, the appellant had requested the Chartered Accountant to clarify the position vide the following letters:-

<i>S.No.</i>	<i>dated</i>
1	10.08.2005
2	11.08.2005

8. The Chartered Accountant inturn appears to have forwarded a letter intimating to the Commissioner of Central Excise, the respondent and asked for a verification as to whether the service tax was payable. On these charges. However, the appellant did not receive any clarification on the subject.

9. It appears that on 12.08.2005 a interactive session was also held by the respondent with service provider where service providers were asked to attend the seminar in connection with amendment to Finance Act, 1994 vide Finance (No.2) Act 2004.

10. It is the case of the appellant that the appellant's Chartered Accountant was orally informed that no service tax was payable and



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therefore no service was to be paid on the above mentioned penal charges levied and collected by the appellant banks from its customers.

11. However, the Superintendent of Central Excise, Karur issued Letter No.303 of 2007 dated 29.06.2007 and called upon the appellant to pay service tax on several issues. In reply dated 30.07.2007 bearing reference PDD/ST/4033/2007-08, the petitioner replied the collection of penal charges were not by way of services and therefore may not attract service tax and no tax was payable on the said amount.

12. A reference was alluded to the Interactive Seminar held by the Office of the respondent on 12.08.2005 wherein the Chartered Accountant of the appellant had ostensibly raised the issue and was informed that no service tax and surcharge was payable by the appellant.

13. However, there are no records to show either the appellant's Chartered Accountant had participated in the Interactive Seminar held by 12.08.2005 or that a decision was conveyed to the effect that no service tax was payable on the penal charges.



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14. After the appellant had replied on 30.07.2017, the respondent issued a Show Cause Notice dated 09.04.2008 bearing reference C.No.V/ST/15/6/2008-Cx.Adj under the proviso to Section 73(1) of the Finance Act, 1994 and proposed to levy interest under Section 75 and penalty under Sections 76 and 78 of the Finance Act, 1994/on the ground that the appellant wilfully failed to pay tax and suppressed the value of service in the returns filed in ST-3. The show cause notice also proposed a demand of Rs.1,59,00,241/- towards service tax and education cess for the period between 10.09.2004 to 31.07.2007 as detailed below:-

<i>Service Tax</i>	<i>Education Cess</i>	<i>Total Amount</i>
Rs.1,55,88,472	Rs.3,11,769/-	Rs.1,59,00,241/-

15. The appellant reiterated the position in its reply dated 29.04.2008 which culminated the Order in Original No.2/2008 (ST) dated 19.06.2008 whereby the following amounts were confirmed :-

(1)I confirm the demand of Rs. 1,55,88,472/-
(Rupees one crore fifty five lakhs eighty



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eight thousand four hundred and seventy two only) as Service Tax and Rs. 3,11,769/-(Rupees three lakh eleven thousand seven hundred and sixty nine only) as educational cess payable on Cheque Return charges, Minimum Balance violation charges and Non maintenance of QAB collected from the customers for the period from 10.9.2004 to 31.3.2007 under the proviso to Section 73(1) of Finance Act, 1994 read with Rule 6 of Service Tax Rules, 1994;

- (ii) I order that interest at the appropriate rate on the amount confirmed vide Sl. No. (i) above is liable to be recovered from the noticee under Section 75 of the Finance Act, 1994;
- (iii) **I impose a penalty of Rs. 200/- per day on the noticee in respect of the 1 service tax payable during the period from 01.07.2003 to 17.04.2006, under the provisions of section 76 of Finance Act 1994, -**
- (iv) **I impose a penalty of 2% per month (being the higher amount of penalty) in respect of the service tax payable during the period from 18.04.2006, till the date of payment of service tax due, under section 76 of the Finance Act, 1994, on the noticee. The penalty so payable under Sl. No. (iii) and (iv) shall not exceed the actual amount of service tax payable.**
- (v) **I impose a penalty of Rs. 1000/- (Rupees One thousand only) on the noticee under Section 77 of the Finance Act, 1994.**
- (vi) **I impose penalty of Rs. 1,59,00,241/- (Rupees One crore fifty nine lakh two hundred and forty one only) on the noticee under section 78 of the Finance Act, 1994.**



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16. A reference was made to the letter dated 11.08.2005 of the appellant in the finding portion of the Order in Original No.2/2008 was passed by the respondent is dated 19.06.2008. However, there is no discussion as to whether the aforesaid letter was indeed received by the respondent and that the Chartered Accountant concerned of the appellant had indeed participated in the Interactive Seminar held on 12.08.2005.

17. Point for consideration is whether the appellant can be fastened with a liability to pay service tax and penalty?

18. The service tax of banking and financial service was altered with effect from Finance (No.2) Act, 2004 dated 10.09.2004 by Substituting the definition of “banking and other financial services”. Prior to the aforesaid period, the definition read differently. The definition as it stood prior to 10.09.2004 and with effect from 10.09.2004 are as under : -

<i>Section 65(12) prior to substitution(as it stood prior to</i>	<i>Section 65(12) after substitution(as it stood after</i>
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10.09.2004)	10.09.2004)
12)"banking and other financial service" means- (a)the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate, namely:- (i) financial leasing services including equipment leasing and hire-purchase by a body corporate; (ii) credit card services; (iii) merchant banking services; (iv)securities and foreign exchange (forex) broking; (v) asset management including portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services, but does not include cash management; (vi) advisory and other auxiliary financial services including investment and portfolio re search and advice, advice on mergers and acquisitions and advice on corporate re structuring and strategy;	12) "banking and other financial services" means (a)the following services provided by a banking company or a financial institution including a non-banking financial company or any other body corporate or [commercial concern], namely :— (i) financial leasing services including equipment leasing and hire-purchase; [‘Explanation.—For the purposes of this item, “financial leasing” means a lease transaction where — (i) contract for lease is entered into between two parties for leasing of a specific asset; (ii) such contract is for use and occupation of the asset by the lessee; (iii) the lease payment is calculated so as to cover the full cost of the asset together with the interest charges; and (iv) the lessee is entitled to own, or has the option to own, the asset at the end of the lease period after making the lease payment;] [(ii)Omitted]



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and
(vii) provision and transfer of information and data processing;
(b) foreign exchange broking provided by a foreign exchange broker other than those covered under sub-clause (a);

(iii) merchant banking services;

(iv) Securities and foreign exchange (forex) broking, and purchase or sale of foreign currency, including money changing;]

(v) asset management including portfolio management, all forms of fund management, pension fund management, [custodial, depository and trust services,]

(vi) advisory and other auxiliary financial services including investment and portfolio research and advice, advice on mergers and acquisitions and advice on corporate restructuring and strategy;

(vii) provision and transfer of information and data processing; and

(viii) banker to an issue services; and

(ix) other financial services, namely, lending, issue of pay order, demand draft, cheque, letter of credit and bill of exchange, transfer of money



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	including telegraphic transfer, mail transfer and electronic transfer, providing bank guarantee, overdraft facility, bill discounting facility, safe deposit locker, safe vaults, operation of bank accounts;] (b)foreign exchange broking provided by a foreign exchange broker other than those covered under sub-clause (a);
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19. The expression “taxable service” was defined in Section 65(105)(zm), the definition of taxable service and after in Section 65(105)(zm) read as under :-

<i>Section 65(105) prior to substitution(as it stood prior to 10.09.2004)</i>	<i>Section 65(105) after substitution(as it stood after 10.09.2004)</i>
(zm) to a customer, by a banking company or a financial institution including a non-banking financial company, in relation to banking and other financial services.	(zm)to a customer, by a banking company or a financial institution including a non-banking financial company, or any other body corporate or commercial concern, in relation to banking and other financial services

20. Thus, service tax came to be levied a banking company or financial institutions including non banking financial company or any



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other body corporate or commercial concern in relation to banking and other financial services as defined in Section 65(12) as amended with effect from 10.09.2004. It also included few other activities within its scope. These penal charges have been purportedly collected by the appellant pursuant to guidelines of the Reserve Bank of India (RBI) in its circular No DBOD.Dir.BC.53/13.10.00/2002-03 dated 26.12.2002.

21. A reference was also made to recommendation of Damodaran Committee on customer service in banks which, inter-alia, recommended that banks should inform the customer immediately on the balance in the account breaching minimum balance and the applicable penal charges for not maintaining the balance by SMS/Email/letter. It was submitted that the penal charges levied was to be in proportion to the shortfall observed, although the said guidelines issued long after the period and dispute. It is not in dispute that the appellant has now paid the tax and accepted the liability.

22. To answer the substantial questions of law, it may be useful to refer few dates of the replies to the show cause notices as mentioned below :-



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<i>S.No.</i>	<i>Show cause notice dated</i>	<i>Reply dated</i>	<i>Order in Original No. & Date</i>
1	09.04.2008	29.04.2008	No.2/2008 (ST) dated 19.06.2008

23. In this case, as mentioned above the Show Cause Notice bearing Reference C.No.V/ST/15/6/2008-Cx.Adj was issued on 09.04.2008 for the period from 10.09.2004 to 31.03.2007. The said show cause notice preceded a notice dated 29.06.2007.

24. As per Section 73 (3) of the Finance Act, 1994 an Assessee can pay the amount of service tax on the basis of his or her or its own ascertainment or on the basis of tax ascertained by a Central Excise Officer before the service of notice under Sub section (1) of Section 73 in respect of such service tax and inform the Central Excise Officer in which case no notice under sub-section (1) shall be served on receipt of such information in respect of the amounts paid .

25. As per Explanation-1 to sub-section (3) of Section 73 of the Finance Act, 1994, a service provider who fails to pay the tax is also



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required to pay interest under Section 75 of the Finance Act, 1994.

26. As per sub section (1A) to Section 73 as inserted by Finance Act, 2006 with effect from 18.04.2006 which was in force during the period in dispute, a person who has been issued with a show cause notice under proviso to Section 73(1) of the Finance Act, 1994 on account of the short payment or short levied or short-paid or erroneously refunded, by reason of fraud , collusion or any wilful mis-statement or suppression of facts, or contravention of any of the provisions of Chapter-V or the rules made thereunder, with intent to evade payment of service tax, by such person or his agent, to whom a notice is served under the proviso to sub-section (1) by the Central Excise Officer, such person or agent as the case may be pay service shall also tax in full or in part as may be accepted together and the interest payable thereon under Section 75 and penalty equal to twenty-five percent of the service tax specified in the notice or the service tax so accepted by such person within thirty days of the receipt of the notice. This option was also not exercised by the appellant.

27. Thus, prior to issuance of the Show Cause Notice



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No.C.No.V/ST/15/6/2008-Cx.Adj dated 09.04.2008, the appellant could have paid the entire amount of service tax together with interest under Section 75 either on its own ascertainment or on the ascertainment of the department, in which case no penalty was to be levied provided ingredients under provision to sub-section(1) to Section 73 of the Finance Act, 1994 were not attracted.

28. After issuance of Show Cause Notice No.C.No.V/ST/15/6/2008-Cx.Adj dated 09.04.2008 under proviso to Sub-section (1) to Section 73 of the Finance Act, 1994, the appellant could pay tax, interest under Section 75 and penalty equal to 25% of the service tax specified in the notice or admitted by the appellant within thirty days of the receipt of the notice under sub-section (1A) to Section 73 of the Act.

29. The petitioner however participated in the proceedings by filing a reply dated 29.04.2008 which culminated in Order in Original No.2 of 2008 order dated 19.06.2008. Thereafter, the appellant paid a tax on 03.07.2008 i.e. within 14 days. There is no dispute on the same.



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However, it is not clear whether the appellant has paid interest for the period in dispute under Section 75 of the Finance Act, 1994. There are also no records to substantiate that the appellant had paid the interest under Section 75 of the Finance Act, 1994.

30. The petitioner has paid the Service Tax on 03.07.2008 i.e. within 115 days from the date of receipt of Show Cause Notice bearing C.No.V/ST/15/6/2008-Cx.Adj dated 09.04.2008.

31. Benefit of Sub-section (1A) to Section 73 cannot be extended by relaxing the period beyond 30 days as it is impermissible. However, there were several clarifications of the Central Board of Excise and Customs that were floating around. In so far as charging of penal amounts on the customers is concerned, Circular No.96/7/2007-ST dated 23.08.2007 was issued by the Central Board of Excise and Customs. There it was clarified that non retention charges being penal rent for retaining the containers beyond pre-determined period is not chargeable to Service Tax.



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32. Similarly, Circular No.121/2/2010-S.T dated 26.04.2010, it was clarified that surcharge collected on the delayed payment of telephone bills was not a consideration for rendering of taxable service under Finance Act, 1994 and therefore no service tax was payable on surcharge collected by the telephone department.

33. The Tribunal has distinguished these Circulars on the ground that these clarifications were issue in the different context of different service and on the premise that retention charges were collected as penal rent and therefore the clarification is not relevant and taxation of the receipts of the aforesaid nature made by the Appellant bank in the course of provision of service of” operation of bank accounts” by its customers which is inextricably connected with the provision of banking service and is also an integral part of that. The clarification issued by the Board is binding on the department. It is not binding on the Courts as per the decision of the Hon'ble Supreme Court in ***Commissioner of Central Excise v. Ratan Melting & Wire Industries, (2008) 13 SCC 1.***

34. We are of the view that the appellant was entitled to take a



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bonafide stand that no service tax was payable in the context of collection of penal charges although it could be concluded that it was liable to pay service tax. There is no record to show that failure to pay service tax was wilful and deliberate as held in *Pharmaceuticals Co. v. CCE [1995 Supp (3) SCC 462*.

35. The Hon'ble Supreme Court in *Uniworth Textiles Ltd., vs. Commissioner of Central Excise, Raipur, (2013) 9 SCC 753*, has held that if non-disclosure of certain items assessable to will not invite the wrath of the proviso for the non-payment of duty on disclosed items, after inquiry from the department concerned and does not attract the proviso. Relevant portion of the decision reads as under :-

12. We have heard both sides, Mr R.P. Bhatt, learned Senior Counsel, appearing on behalf of the appellant, and Mr Mukul Gupta, learned Senior Counsel appearing on behalf of the Revenue. We are not convinced by the reasoning of the Tribunal. The conclusion that mere non-payment of duties is equivalent to collusion or wilful misstatement or suppression of facts is, in our opinion, untenable. If that were to be true, we fail to understand which form of non-payment would amount to ordinary default? Construing mere non-payment as any of the three categories



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contemplated by the proviso would leave no situation for which a limitation period of six months may apply. In our opinion, the main body of the section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or wilful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso.

13. *This Court in Pushpam Pharmaceuticals Co. v. CCE [1995 Supp (3) SCC 462 : (1995) 78 ELT 401] while interpreting the proviso of an analogous provision in Section 11-A of the Central Excise Act, 1944, which is pari materia to the proviso to Section 28 discussed above, made the following observations: (SCC pp. 463-64, para 4)*

“4. Section 11-A empowers the Department to reopen proceedings if the levy has been short-levied or not levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is



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the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.”

(emphasis supplied)

14. *In Sarabhai M. Chemicals v. CCE [(2005) 2 SCC 168] a three-Judge Bench of this Court, while referring to the observations extracted above, echoed the following views: (SCC p. 181, paras 23-25)*

“23. Now coming to the question of limitation, at the outset, we wish to clarify that there are two concepts which are required to be kept in mind for the purposes of deciding this case. Reopening of approvals/assessments is different from raising of demand in relation to the extended period of limitation. Under Section 11-A(1) of the Central Excise Act, 1944, a proper officer can reopen the approvals/assessments in cases of escapement of duty on account of non-levy, non-payment, short-levy, short-payment or erroneous refund, subject to it being done within one year from the relevant date. On the other hand, the demand for duty in relation to extended period is mentioned in the proviso to



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Section 11-A(1). Under that proviso, in cases where excise duty has not been levied or paid or has been short-levied or short-paid or erroneously refunded on account of fraud, collusion or wilful misstatement or suppression of facts, or in contravention of any provision of the Act or Rules with the intent to evade payment of duty, demand can be made within five years from the relevant date. In the present case, we are concerned with the proviso to Section 11-A(1).

24. In Cosmic Dye Chemical v. CCE [(1995) 6 SCC 117] this Court held that intention to evade duty must be proved for invoking the proviso to Section 11-A(1) for extended period of limitation. It has been further held that intent to evade duty is built into the expression 'fraud and collusion' but misstatement and suppression is qualified by the preceding word 'wilful'. Therefore, it is not correct to say that there can be suppression or misstatement of fact, which is not wilful and yet constitutes a permissible ground for invoking the proviso to Section 11-A.

25. In Pushpam Pharmaceuticals Co. v. CCE [(1995) Supp (3) SCC 462 : (1995) 78 ELT 401] this Court has held that the extended period of five years under the proviso to Section 11-A(1) is not applicable just for any omission on the part of the assessee, unless it is a deliberate attempt to escape from payment of duty. Where facts are known to both the parties, the omission by one to do what he might have done and not that



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he must have done does not constitute suppression of fact.”

15. In *Anand Nishikawa Co. Ltd.v.CCE*[(2005) 7 SCC 749], while again referring to the observations made in *Pushpam Pharmaceuticals Co.*[1995 Supp (3) SCC 462 : (1995) 78 ELT 401] , this Court clarified the requirements of the proviso to Section 11-A as follows: (*Anand Nishikawa Co. Ltd. case* [(2005) 7 SCC 749] , SCC p. 759, paras 26-27)

“26.... This Court in Pushpam Pharmaceuticals Co.v.CCE [1995 Supp (3) SCC 462 : (1995) 78 ELT 401] while dealing with the meaning of the expression ‘suppression of facts’ in the proviso to Section 11-A of the Act held that the term must be construed strictly,it does not mean any omission and the act must be deliberate and wilful to evade payment of duty. The Court further held: (SCC pp. 463-64, para 4)

‘4.... In taxation, it [suppression of facts] can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.’

27. Relying on the aforesaid observations of this Court in Pushpam Pharmaceuticals Co.v.CCE[1995 Supp (3) SCC 462 : (1995) 78 ELT 401] we find that ‘suppression of facts’ can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty. When facts were known to both the parties, the omission by one to do what he might have done and not that he must have done, would not render it suppression. It is settled law that mere failure to declare does not



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amount to wilful suppression. There must be some positive act from the side of the assessee to find wilful suppression. Therefore, in view of our findings made hereinabove that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in the proviso to Section 11-A of the Act.”

(emphasis in original)

16. In CCE v.H.M.M. Ltd. [1995 Supp (3) SCC 322] this Court held that mere non-disclosure of certain items assessable to duty does not tantamount to the mala fides elucidated in the proviso to Section 11-A(1) of the Central Excise Act, 1944. It enunciated the principle in the following way: (SCC pp. 323-24, para 2)

“2....The mere non-declaration of the waste/by-product in their classification list cannot establish any wilful withholding of vital information for the purpose of evasion of excise duty due on the said product. There could be, counsel contended, bona fide belief on the part of the assessee that the said waste or by-product did not attract excise duty and hence it may not have been included in their classification list. But that per se cannot go to prove that there was the intention to evade payment of duty or that the assessee was guilty of fraud, collusion, misconduct or suppression to attract the proviso to Section 11-A(1) of the Act. There is considerable force in this contention.”



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Therefore, if non-disclosure of certain items assessable to duty does not invite the wrath of the proviso, we fail to understand how the non-payment of duty on disclosed items, after inquiry from the department concerned meets with that fate.

36. In view of the above, we are inclined to hold no penalty is payable by the appellant under any of the provisions of the Act. Since tax payable has been accepted by the appellant, appellant shall also pay interest on belated payment of tax under Section 75 of the Finance Act, 1994.

37. We therefore, partly allow the appeal and answer the substantial questions of law partly in favour of the appellant by holding no penalty is imposable on the appellant. The appellant shall pay interest under Section 75 of the Finance Act, 1994 within a period of thirty days from the date of receipt of a copy of this order, if same has not been already paid.

38. This Civil Miscellaneous Appeal is partly allowed with the above observations. No costs. Consequently, connected miscellaneous



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petition is closed.

(R.S.K.J.,)

(C.S.N.J.,)

27.09.2024

Index : Yes/No
Internet : Yes/No
Speaking : Non Speaking Order
Neutral Citation : Yes/No
kkd

To

The Commissioner of Central Excise,
No.1, Williams Road, Cantonment,
Trichy.

**R.SURESH KUMAR,J.
AND
C.SARAVANAN.J.
kkd**



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