

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 886 of 2012

[Arising out of Order-in-Original No. 12/2012 dated 30/01/2012 passed
by the Commissioner of Service Tax, Bangalore]

YCH Logistics (India) Pvt. Ltd.

Plot No. D VI, SIPCOT Hi-tech SEZ,
Sirumangadu Village, Sriperumbudur,
kanchipuram – 602 105
Tamilnadu

Appellant(s)

VERSUS

C.C.E & C.S.T.-Bangalore Service

Tax- I

1st To 5th Floor,
TTMC Building, Above BMTC Bus Stand,
Domlur
Bangalore – 560 071
Karnataka

Respondent(s)

Appearance:

Mr. Rahul Binani, CA
Pricewaterhouse Co-oper (P) Ltd.
6th Floor, Tower D The Millenia
1-2 Murphy Road, Ulsoor
Bangalore – 560 008
Karnataka

For the Appellant

Mr. K.B. Nanaiah, Asst. Commr. (AR)

For the Respondent

Date of Hearing: 10/03/2020

Date of Decision: 13/03/2020

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20331 / 2020

Per : S.S GARG

The present appeal is directed against the impugned order dated
31/01/2012 passed by the Commissioner of Service Tax. Briefly the

facts of the present case are that the appellants are engaged in providing "Clearing & Forwarding Agency's Service", "Storage & Warehousing Service" and "Cargo Handling Service". During the course of verification of records of the assessee by the Internal Audit Party of the Service Tax Commissionerate, Bangalore, it was noticed that, the assessee had received services from abroad, viz. Management service/advise, Data Communication, use of Trademark, etc. The services imported by the assessee are taxable services and are chargeable to Service Tax but they had not paid the Service Tax applicable on the same. The assessee were liable to pay the Service Tax on import of such services as a recipient as provided under Section 66A of the Finance Act, 1994 read with Rule 2(1)(d)(iv) of Service Tax Rules, 1994. The value of import of services and Service Tax payable are as per the details furnished below:

Year	Taxable Value of Imported Services (Rs.)	Service Tax Payable (Rs.)
2008-09	6,11,21,699/-	63,22,169/-
2009-10	6,64,90,911/-	68,48,564/-
	Total	1,31,70,733/-

The Service Tax not paid was liable to be recovered from the assessee by invoking the proviso to Section 73(1) of the Finance Act, 1994.

On being pointed out by the Audit Party, the assessee accepted the contention of the audit and paid the Service Tax amount of Rs. 1,31,70,733/- (Rupees One Crore Thirty One Lakh Seventy Thousand Seven Hundred and Thirty Three only) vide GAR 7 challan No. 10014 dated 02.02.2011 along with interest of Rs. 2,12,92,351/- (Rupees Two Crore Twelve Lakhs Ninety Two Thousand Three Hundred and Fifty One only) vide GAR 7 Challan dated 12.02.2011.

Department entertained the view that the appellant has

deliberately and intentionally suppressed the material facts and the same was detected during the audit, issued the show-cause notice dated 19/04/2011 and after following the due process, the original authority confirmed the demand along with interest and also appropriated the amount of service tax and interest paid by the appellant before the issue of show-cause notice. Original authority also imposed penalty of Rs. 1,000/- (Rupees One Thousand only) under Section 77 of the Act for contravention of Section 70 of the Act and also imposed equal penalty under Section 78 of the Finance Act for willfully suppressing the value of taxable service.

2. Heard both the parties and perused the records.

3. Learned consultant for the appellant submitted that imposition of penalty under Section 77 and 78 of the Finance Act is in contravention of the provisions of Section 73(3) of the Finance Act. He further submitted that the service tax along with interest has already been paid by the appellant before the issuance of show-cause notice. It is his further submission that Section 73(3) of the Finance Act, in unambiguous terms states that when assessee has paid the service tax either on his own or on the basis of the officer's ascertainment and inform the officer of such payment, then the said Section does not give any power to such officer to issue a show-cause notice in respect of the tax so paid and such issuance of show-cause notice is without the force of law and accordingly not tenable in law. Learned consultant further submits that the amendment made in May 2008 under Section 67 related to payment of tax through entries in the books of accounts in respect of associated companies was not known to them. He further submitted that the original authority has not given any finding to the effect that the appellant has intentionally not paid the service tax. In support of his submission, the appellant has relied upon the following decisions:

- a. *Bhoruka Aluminium Limited Vs. CCE & ST, Mysore – 2017 (51) S.T.R. 418 (Tri.-Bang)*
- b. *Intercontinental Consultants & Technocrats Pvt. Ltd. V. U.O.I – 2013 (29) S.T.R. 9 (Del.)*
- c. *Amit Sales V. CCE – 2009 (13) S.T.R. 165 (Tri.-Del.)*
- d. *Jindal Saw Ltd. (IPU) V. CCE – 2013 (30) S.T.R. 490 (Tri.-Ahmd.)*
- e. *C.S.T, Bangalore V. Motor World – 2012 (27) S.T.R. 225 (Kar.)*
- f. *Hindustan Petroleum Corporation Ltd. V. CCE, Mumbai-II – 2012 (25) S.T.R. 161 (Tri.-Mumbai)*
- g. *CCE & ST, LTU, Bangalore V. Adeco Flexione Workforce Solutions Ltd. – 2012 (26) S.T.R. 3 (Kar.)*
- h. *Reliance Industries Ltd. V. Commissioner of Customs, Rajkot – 2013 (287) E.L.T. 433 (Tri.-Ahmd.)*
- i. *Indusland Media & Communication Ltd. Vs. C.S.T, Bangalore-I – 2017 (5) G.S.T.L. 268 (Tri.-Bang.)*
- j. *Dineshchandra R. Agarwal Infracon Pvt. Ltd. Vs. CCE, Ahmedabad – 2010 (18) S.T.R. 39 (Tri.-Ahmd.)*
- k. *Punjab Chemicals & Crop Protection Ltd. Vs. CCE, Chandigarh – 2017 (47) S.T.R. 345 (Tri.-Chan.)*
- l. *Reliance Industries Ltd. Vs. CCE & ST, LTU, Mumbai – 2016 (44) S.T.R. 82 (Tri.-Mumbai)*
- m. *Surya Pharmaceuticals Ltd. Vs. CCE, Chandigarh-II – 2016 (43) S.T.R. 479 (Tri.-Chan.)*
- n. *CST, Bangalore Vs. Motor World – 2012 (27) S.T.R. 225 (Kar.)*

4. On the other hand, the learned AR defended the impugned order and submitted that the appellants suppressed the facts as the appellant has failed to disclose the said fact in their returns. He further submits that had the audit not detected the fact of non-payment, it would have gone

unnoticed.

5. After considering the submissions by both the parties and perusal of the provisions of Section 73, 77 and 78 of the Finance Act, 1994 and the various decisions relied upon by the appellant cited supra, we find that Section 73(3) is very clear as it says that if a tax is paid along with interest before the issuance of show-cause notice, then in that case show-cause notice shall not be issued. In the present case, we find that the contention of the appellant that they bona fidely believed that they are not liable to pay service tax but when the audit party raised the objection that they are liable to pay service tax, then they immediately paid the service tax along with interest which is admitted in the impugned order, is justified. Further except mere allegation of suppression, the Department did not bring any material to prove that there was suppression and concealment of facts to evade payment of tax. Consequently, in our considered view, the imposition of penalty under Section 77 & 78 is not justified and bad in law. Hence, we set aside the penalty imposed on the appellant by allowing the appeal of the appellant.

(Order was pronounced in Open Court on **13/03/2020**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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