

**SUMMARY OF IMPORTANT JUDICIAL PRONOUNCEMENTS
FROM THE CHAMBERS OF ADVOCATE ANKIT KANODIA**

REFERENCE NO- SKKA/108/2022

BASIC INFORMATION

IN THE MATTER OF	HARJAS ASSOCIATES PRIVATE LIMITED
NAME OF Authority	CESTAT, DELHI
Petition/Appeal No.	E/51174/2020
Link to	MANU/CE/0010/2022
Date of Order	06-01-2021
Relevant Section/Rule	Section 72 and 73 of Finance Act 1994- Time limit to issue show cause notice And Section 38(2) of Finance Act 1994- Accounting for and payment of duty

FACTS IN BRIEF

The Appellant has been alleged by the revenue for non-disclosure and non-payment of service tax on his taxable revenue for the tax period 2013-14, 2014-15, 2015-16 and first quarter of 2016-17. Accordingly, two consecutive show cause notices demanding Rs. 87,37,473/- and Rs. 3,78,88,566/- along with interest and penalty respectively, were issued to the appellant as on 7/10/2018 and 16/4/2019 by Invoking extended period of limitation. Giving a common reply to both the notices the appellant stated that firstly, the revenue cannot issue two consecutive show cause notices on the same grounds, and that adjudication cannot take place in Piece meal manner. Secondly, the revenue had complete knowledge about the appellant's business since 2016 itself when a similar show cause notice was issued, to whose reply the appellant had made necessary submissions stating therein that the appellant was engaged in providing GTA services wherein the liability of discharging tax is on the service recipient as per Notification No. 30/2012-ST. Lastly, both the notices were time barred, as extended period cannot be invoked since there was no intention of tax evasion. Post such a reply the adjudicating authority vide the impugned Order dated 21/08/2020 dropped a major portion of demand except Rs. 13,27,904/- along with interest and equal penalty which as per the revenue were were transaction entered into by appellant with proprietary firms, where the liability to discharge the tax is on the appellant. Thus the present appeal.

JUDGEMENT/ORDER OF THE AUTHORITY

The tribunal held as below: -
 - It was clear from the records that, that the nature of business activity of the appellant was known to the revenue since January 2016. **Further, a failure to declare via returns does not amount to mis-declaration or willful suppression. In the absence of fraud or willful suppression of facts, extended period of limitation cannot be invoked.** The demand raised for the period 2013-14 to 2015-16 is beyond the normal period of limitation. Thus, the same is liable to quashed.
 - For the portion of demand for the period Apr 2016 to June 2017, which was within the normal period of limitation, the plea of the department was that the assessee was liable to discharge service tax liability on the GTA services rendered by it to proprietary concerns, but upon perusal of the evidence produced by the assessee it was found that the said proprietary concerns were factories registered under factories Act as per certificates issued by state government, where by the liability to discharge tax is on the service recipient on Reverse charge basis. Thus, the appeal filed by the appellant was allowed with consequential relief if any as per law.

OUR COMMENTS

The above judgment would be useful in all such cases wherein demand has been raised on account of difference in ITR and ST 3 income when the assessee was not liable to pay tax because of taxability under RCM. Non disclosure of such amounts in ST 3 return by the assessee had lead to such frivolous litigation upto CESTAT. Even though the revenue should have accepted the material fact after verification, but in our view the assessee should also had disclosed correct taxable values in ST 3 return. Though the CESTAT had finally exonerated the assessee from all liabilities, however this may not be treated as bench mark case in our view to fight such litigations.