

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.1

Service Tax Appeal No. 12328 of 2014-SM

(Arising out of OIA-AHM-SVTAX-000-APP-017-14-15 Dated 23.04.2014 passed by the Commissioner(Appeals), Central Excise-AHMEDABAD)

Ashima Limited

Texcellence Complex, Near Anupam Cinema,
Khokhra Mehmedabad,
AHMEDABAD, GUJARAT

.....Appellant

VERSUS

Commissioner of Service Tax – AHMEDABAD

1st Floor, Central Excise Bhawan,
CENTRAL EXCISE BHAVAN, AMBAWADI,
AHMEDABAD, GUJARAT-380015

.....Respondent

APPEARANCE:

Shri Nirav Shah, Advocate appeared for the Appellant
Shri Himanshu Nachane, Superintendent(AR) appeared for the Respondent

CORAM:

HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

FINAL ORDER NO. 10186/2026

DATE OF HEARING :17.03.2026
DATE OF DECISION:18.03.2026

SOMESH ARORA

1. The appellant were engaged in providing taxable services as "Business Auxiliary Service" and "Transport of goods by Road" and registered with Service Tax Department having Service Tax Registration No.AAACK6265AST001.

1.1 During the course of Review of 'Business Auxiliary Services" (BAS) by the CERA Audit party, it was noticed that the said appellant had declared less value of taxable service in their periodical ST-3 returns filed with the department as compared with the value declared in their profit & loss account filed with the Income Tax Department for the year 2004-05 and have short paid the Service Tax.

1.2 A SCN was issued on 07.08.2009 which was adjudicated vide OIO No. 42/STC-AHD/ADC(AS)/2012-13 dtd. 30.01.2013 and service tax of Rs. 7,90,159/- was confirmed alongwith penalty u/s 76 & penalty u/s 78 of the Finance Act, 1994.

1.3 The adjudicating authority had observed that the appellant has not disputed the taxability of Commission Income but their main contention was regarding the date from which, service tax on commission Income came into force. The appellant had argued with regard to the non-payment of service tax for the period from 9/7/2004 to 10/9/2004, that the commission agent's income was introduced only with effect from 10/9/2004. The appellant had argued regarding applicability of service tax on BAS from 10.09.2004 whereas, as per not. No. 13/2003-ST dtd. 20.03.2003 and amended by not. No. 08/2004-ST dtd. 09.07.2004, only commission agents engaged in sale and purchase of agriculture produce were exempted and service provided by other "commission agents" continued to be taxable. The appellant had taken service tax registration w.e.f. 28.09.2004.

1.4 As per Not. No. 13/2003-ST dtd. 20.06.2003, the BAS provided by a Commission Agent were exempted from the service tax leviable the under sub-section (2) of Section 66 of the said Act. (Explanation. - For purposes of this notification, "commission agent" means a person who causes sale or purchase of goods, on behalf of another person for a consideration which is based on the quantum of such sale or purchase). This Notification came into force on the 1st day of July, 2003. The Notification No. 13/2003-ST dated 20.06.2003 was amended vide Notification 08/2004-ST dated 09.07.2004. As per the amendment, only commission agents engaged in sale or purchase of agriculture produce were exempted from service tax and services provided by all other "Commission Agents" continued to be taxable.

1.5 The services provided by the commission agents prior to 09.07.2004 were not taxable. In the instant case, the appellant who are not the commission agents for agriculture produce, were liable to pay service tax w. e. f. 09.07.2004. Therefore, the contention of the said assessee that their income earned on account of commission agent prior to 10.09.2004 was not taxable is found to be incorrect. The commission agents, except those

engaged in sale & purchase of agriculture produce, were taxable with effect from 09.07.2004.

1.6 The said OIO was adjudicated vide OIA No. AHM-SVTAX-000-APP-017-14-15 dtd. 22.04.2014.

1.7 Commr(A) observed that the adjudicating authority came to a conclusion that the appellant has shown less Income in their service tax returns and consequently short paid service tax. The appellant had contended that they had paid entire service tax as and when the payment was received. The appellant explained that they had received commission from M/s Ashima Dyecot Ltd and had made payment for purchase of readymade garments from them. At the end of financial year, when balance sheet was prepared, closing balances of various accounts of Ashima were clubbed in to one account for the sole purpose of presentation of one overall consolidated/net balance of Ashima in the balance sheet as a single figure. Hence, the outstanding against commission which was always less, and adjusted against payment to be made to Ashima and the remaining amount was shown in the balance sheet in the list of creditors. Hence, outstanding commission would not show in the list of debtors at the end of financial year.

1.8 Further, Commr(A) observed that the adjudicating authority has added opening balance of debtors and billing made during the year and then deducted closing balance of debtors for arriving at commission income during a particular financial year. However, the outstanding commission receivable from Ashima would not reflect in the debtors list, due to accounting practice adopted by them, as claimed by the appellant. Consequently, the commission income arrived at by the adjudicating authority would be higher than what it would be otherwise. Considering the peculiar facts of the case, the concern of the appellant has to be addressed suitably before arriving at a taxable value for determining service tax liability. For this limited purpose, the case was remanded back to the adjudicating authority with a direction to re-quantify

the taxable value taking into consideration the transactions involved with Ashima.

1.9 Being aggrieved by the Commr(A)'s order, the present appeal has been filed by the appellants specifically for the period of 09.07.2004 to 10.09.2004 covered in the SCN dated 07.08.2009.

2. The main ground pressed by the appellant at the time of hearing, along with the various case laws relied upon, are as under:-

- The demand is confirmed without considering settled law on invoking extended period. The lower authority has clearly failed to follow settled legal position that once balance sheets and ST-3 returns are filed, there cannot be any intention of evasion of tax. It is further submitted that balance sheet of public limited company is public document and extended period is not invocable if demand is issued on the basis of balance sheet. Reliance is placed on following judgement:

- a) 2018 (18) G.S.T.L. 32 (All.)
- b) (2024) 18 Centax 249 (Tri.-All)
- c) (2024) 19 Centax 375 (Tri.-All)
- d) 2017 (49) S.T.R. 552 (Tri. - Del.)
- e) 2003 (161) ELT 346

3. The learned Authorised Representative opposes the prayer for relief on the ground that all aspects of the matter have already been duly considered by the Commissioner (Appeals). He submits that the lame excuse offered by the appellants that they paid tax only upon receipt of consideration clearly indicates an intention to defy the law and to avoid payment of duty, even when it was otherwise payable, merely because they were either unable to recover the amount from their clients or chose not to do so. He further submits that the decisions relied upon by the appellants on the ground of bona fide belief are not applicable, as the legal position was made abundantly clear after the amendment carried out with effect from 09.07.2004, i.e., amendment to

Notification No. 13/2003-ST by Notification No. 08/2004-ST, which clearly brought all commission agents within the ambit of "Commission Agent." He contends that bona fide belief cannot be pleaded by a person who chooses not to read the law or interprets it in a manner convenient to them, particularly when there is no scope for ambiguity or interpretation for any reasonable person. He also pointed out that the practice of awaiting receipt of payment before discharging tax liability further indicates an intention to evade tax in cases where the consideration is not received from clients. Accordingly, he submits that, in the facts and circumstances of the case, as rightly held by the Commissioner (Appeals), there is no scope for invoking the plea of bona fide belief. The extended period of limitation has been rightly invoked and the impugned order deserves to be upheld.

4. This Court has considered the rival submissions. It finds substance in the order made out by the Commissioner (Appeal) as above on the aspect of extended period for the period in dispute before this Court and agrees with further submissions made on the point of bona fide belief as well as applicability of extended period by the AR. The Notification 13/2003-ST as amended by Notification No.08/2004-ST dated 09.07.2004 which is reproduced below:-

<p>2. 13/2003-Service Tax, dated the 20th June, 2003 [G.S.R. 504 (E) dated the 20th June, 2003]</p>	<p><i>In the said notification,-</i></p> <p><i>(i) in the preamble, for the words "commission agent from the service tax leviable thereon under sub-section (2) of section 66 of the said Act", the words "commission agent in relation to sale or purchase of agricultural produce from the service tax leviable thereon under section 66 of the said Act" shall be substituted;</i></p> <p><i>(ii) for the Explanation, the following shall be substituted, namely:-</i></p> <p><i>"Explanation.- For the purposes of this notification,-</i></p> <p><i>(i) "commission agent" means a person who causes sale or purchase of goods, on behalf of another person for a consideration which is based on the quantum of such sale or purchase.</i></p>
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	<p><i>(ii) "agricultural produce" means any produce resulting from cultivation or plantation, on which either no further processing is done or such processing is done by the cultivator like tending, pruning, cutting, harvesting, drying which does not alter its essential characteristics but makes it only marketable and includes all cereals, pulses, fruits, nuts and vegetables, spices, copra, sugar cane, jaggery, raw vegetable fibres such as cotton, flax, jute, indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea but does not include manufactured products such as sugar, edible oils, processed food and processed tobacco."</i></p>
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4.1 It makes it abundantly clear that the only commission agents who remained exempted were those engaged in relation to the sale and purchase of agricultural produce.

4.2 The statutory provisions are clear and leave no scope for interpretation. Non-payment of tax on the ground that the same was not charged cannot be considered a valid basis for claiming any bona fide belief. The decisions relied upon by the learned Advocate are inapplicable to the facts of the present case. Therefore, the appeal is liable to fail. It is further noted that the submission of the learned Advocate regarding payment of duty for the later period, including the extended period, does not support the appellant's case. The decisions cited are clearly distinguishable and not applicable to the facts of the case. Accordingly, the plea of bona fide belief cannot be sustained.

5. Appeal is accordingly rejected.

(Pronounced in the open court on 18.03.2026)

**(SOMESH ARORA)
MEMBER (JUDICIAL)**