CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Service Tax Appeal No.70188 of 2026

(Arising out of Order-in-Appeal No.MRT-EXCUS-000-APPL-MRT-201-2023-24 dated 29/12/2023 passed by Commissioner (Appeals) Central Excise & Service Tax, Ghaziabad)

M/s Jain & Company, **.....Appellant**
(Prop.-Ajit Prasad Jain,
Main Bazar, Near Jain Sthanak,
Gangeru, Shamli-247775)

VERSUS

Commissioner of Central Excise &

CGST, Meerut-I **....Respondent**

(Mangal Pandey Nagar,

Opp. Ch. Charan Singh University, Meerut-250005)

APPEARANCE:

Shri Kartikeya Narain, Advocate for the Appellant
Shri Santosh Kumar, Authorised Representative for the Respondent

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.70216/2026

DATE OF HEARING : 03 June, 2026
DATE OF DECISION : 02 July, 2026

SANJIV SRIVASTAVA:

This appeal is directed against Order-in-Appeal No. MRT-EXCUS-000-APPL-MRT-201-2023-24 dated 29.12.2023 of the Commissioner, CGST (Appeals), Meerut. By the impugned order the following has been held:

> *"4.8 In light of the foregoing facts and findings, I opine that the total amount of service tax short paid by the appellant during 2014-15 is Rs.6,14,638/- [Rupees Six Lakh Fourteen Thousand Six Hundred Thirty Eight only) and the same is liable to be demanded and recovered from*

the appellant, along with accrued amount of interest, by invoking the extended period of time limitation, and equal penalty under the provisions of Section 78 and penalty of Rs. 10,000/- under the provisions of Section 77(2) of the Finance Act, 1994 are liable to be imposed upon the appellant. The impugned Order-in-Original No. 63/AC/D-SML/2021-22 dated 06.07.2022 is accordingly liable to be modified to the above extent.

5. Accordingly, the subject appeal [Appeal No. No. 122-ST/APPL-MRT/MRT/2022-23 dated 09.09.2022] filed by M/s Jain & Company (Prop. Ajit Prasad Jain), Main Bazar, Near Jain Sthanak, Gangeru, Shamli, Uttar Pradesh-247775 is disposed on above terms and the Order-in-Original No. 63/AC/D-SML/2021-22 dated 06.07.2022 passed by the Assistant Commissioner, CGST. Division-Shamli also stands modified to the above extent."

2.1 The appellant, at the relevant time period, was registered with the Service Tax Department vide Registration No. ADXPJ4660PSD001 for providing taxable services as per the Finance Act, 1994

2.2 As per the third-party data received from the Income Tax Department for the Financial year 2014-15. it was observed that gross amount declared as sale of services in Income Tax Return was Rs. 1,03,73,100/-, while as per ST-3 returns filed by the appellant, gross value of services provided was Rs. 55,58,583/-. Thus, it became apparent that during the period 2014-15, the appellant had suppressed the value of sale of services in their ST-3 returns and have consequently, short paid service tax, in total amounting to Rs. 11,48,709/- [Rupees Eleven Lakh Forty Eight Thousand Seven Hundred Nine only] [including all Cesses) as detailed in table below:

Period	Gross receipts towards service as per ITR	Service tax including Cess		
		Payable on ITR receipts	Paid as per ST-3	Difference
2014-15	10373100	1282115	133406	1148709

2.3 Enquiries were initiated and jurisdictional range officer issued summons dated 04.12.2020 and 14.12.2020 to the appellant asking them to provide the following documents for the period 2014-15, 2015-16, 2016-17 and 2017-18 (upto June 2017):

- Copy of Income Tax Return
- Copy of Balance Sheet and Profit & Loss accounts.
- Copy of TDS/ 26AS
- Copies of ST-3 returns.

Appellant did not respond to the summons issued, and provided the documents as called for.

2.4 Thus, it became apparent that during the period 2014-15, the appellant had suppressed the value of sale of services in their ST-3 returns and have consequently, short paid service tax, in total amounting to Rs. 11,48,709/- [Rupees Eleven Lakh Forty Eight Thousand Seven Hundred Nine only] and the same was liable to be demanded and recovered from them, along with interest, by invoking the extended period of time limitation. For various contraventions penalties under the provisions of Sections 78 and 77(2) of the Finance Act, 1994 appeared liable to be imposed upon them.

2.5 A show cause notice dated 30-12-2020 was issued to the appellant asking them to show cause as to why:

i) Service Tax (including all Cesses) amounting to Rs. 1148709/-(Rs. eleven lakh forty eight thousand seven hundred nine only) payable on taxable services income received during the period 2014-15 should not demanded and recovered from them under the proviso to Section 73(1) of Finance Act 1994 read with Section 83 of the Act, and further read with Section 38A of Central Excise Act, 1944 and Section 174 of the Central Goods and Services Tax Act, 2017.

ii) Interest on the service tax at the applicable rate should not be recovered from them under the provisions of Section 75 of the Finance Act, 1994

iii) Penalty should not be imposed upon them under Section 78 of Finance Act, 1994 for the reason of suppressing the material fact and value willfully with the department with intent to evade payment of Service Tax.

iv) penalty should not be imposed upon them under Section 77(2) of the Finance Act, 1994 for violation of Rule 7 of Service Tax Rules, 2004

2.6 The show cause notice was adjudicated by the Assistant Commissioner, vide Order-in-Original No. 63/AC/D-SML/2021-22 dated 06.07.2022 holding as follows:

"ORDER

i) I confirm the demand of Service tax amounting to Rs.1148709/-(Rupees Eleven Lac forty eight thousand seven hundred nine only) (including all Cesses) which is recoverable from M/s JAIN & COMPANY, MAIN BAZAR, NEAR JAIN STHANAK, GANGERU, Shamli-247775 under the proviso to Section 73(1) of Finance Act 1994 read with Section 83 of the Act, and further read with Section 38A of Central Excise Act, 1944 and Section 174 of the Central Goods and Services Tax Act, 2017.

ii) I confirm the demand of Interest at the applicable rate on the service tax amour confirmed in Para(i) under the provisions of Section 75 of the Finance Act, 1994,

iii) l impose Penalty of Rs.1148709/-(Rupees Eleven Lac forty eight thousand seven hundred nine only) upon them under Section 78 of Finance Act, 1994 for the reason of suppressing the material fact and value wilfully with the department with intent to evade payment of Service Tax.

iv) I impose penalty of Rs. 10000/-(Rupees Ten thousand only) upon them under Section 77(2) of the Finance Act, 1994 for violation of Rule 7 of Service Tax Rules, 2004.

3.1 I have heard Shri Kartikeya Narain, Advocate for the appellant and Shri Santosh Kumar, Authorized Representative for the revenue.

3.2 Arguing for the appellant learned counsel submits that:

- appellant had also provided works contract services to Purvanchal Vidyut Vitran Nigam Ltd as a sub-contractor in the F.Y 2013-14. The main contractor is Technocraft construction Pvt. Ltd. and the main contractor released the payment in F.Y.2014-15 and the service tax paid by the main contractor. (Para 4.6.3 of the impugned order)
- appellant provided works contract services in F.Y 2011-12 to NKG Infrastructure. The NKG Infrastructure refund security deposit of the appellant of Rs. 90,240/- in F.Y. 2014-15. Which was shown in form 26AS.
- Department received data about the turnover of the respondent for the year 2014-15 on the basis of income-tax return and associated Form-26AS statement and there was a mismatch between the turnover recorded by the appellant for the said year and the value of the services reflected in ST-3 returns. It appeared to Revenue that the entire turnover of around Rs.1,03,73,100 reflected in said 26AS was on account of provision of service and, therefore, by straight away calculating 12.36% of the said turnover, Revenue demanded service tax of Rs.11,48,709/- after deducting the amount of S.T Rs. 1,33,406/- already paid from the respondent by issue of show cause notice dated 30.12.2020.
- the show-cause-notice was issued in 30.12.2020 without carrying out any investigation and without adducing any new corroborative evidence for invoking any suppression in the show-cause-notice.
- the appellant has contended that the demand has been raised on the basis of differential value shown in ST-3 return viz-a-viz Form 26AS. That the lower authorities were denying to accept the works contracts between Technocraft construction Pvt. Ltd. and the appellant. In which it was clearly mentioned that the Technocraft construction Pvt. Ltd VAT, Service Tax & labour tax will be borne by the Technocraft construction Pvt. Ltd. appellant is not liable to pay tax. Admittedly, no investigation has been

conducted in this case at the Appellant's end by the Adjudicating and first Appellate Authority.

- due to 100% deduction of Service tax procedure obtained by the Technocraft Construction Pvt. Ltd. they said to Sub-contractor (appellant) you are not liable to pay service tax. Under bonafide belief appellant are never collected service tax nor deposited. Even the payment received by the appellant in F.Y.2014-15 is related to work done in F.Y 2013-14.
- appellant is eligible to get the benefit of rule 2A of the service (determination of value) Rules, 2006 and liable to get the benefit of Notification No. 30/2012-ST dated:20.06.2012.
- ITR/ Form 26AS is not statutory documents for determining taxable turnover of the taxpayer under the Service Tax provisions. Form 26AS is maintained by the Income Tax Department on cash / receipt basis for the purpose of tax deducted at source which is the relevant data for income purposes. On the other hand, service tax is chargeable on mercantile basis on the services provided, whether the value of service is received or not. Therefore, the whole basis of demanding service tax by the lower authorities on the basis of Form-26AS information is incorrect and / or misconceived. It has been held by the Hon'ble Tribunal, Regional Bench, Allahabad in the case of M/s Quest Engineers & Consultant Pvt. Ltd. Vs. Commissioner, CGST & Central Excise, Allahabad reported in 2022 (58) GSTL 345 (Tri-All) that form 26AS maintained by the Income Tax Department is not a statutory document for determining taxable turnover for service tax purposes in as much as the entire basis of form 26AS and service tax payment are different. Accordingly, the impugned order confirming service tax demand on the basis of payment released by the service recipients is bad in law and the same is not sustainable.

- once the 100% service tax paid by the service recipient Tecnnocraft Construction Pvt. Ltd. directly to the revenue department then the entire exercise is revenue neutral, as the service tax paid by or on behalf of the Appellant. There was no scope of taking Cenvat credit by the service recipient.
- both the lower authorities could not place any evidence on record to support that the appellant was intending to evade payment of service tax by wilfully suppressing the vital facts from the Department. It has been held by the Hon'ble Supreme Court that mere inaction or failure to do the things would not amount to suppression and therefore, extended period for issuing SCN is not available to the Department.
- without prejudice to the above submissions on merit, the appellant submits that the entire service tax demand of Rs. 6,14,638/- for the period in dispute stands time barred and the same is not sustainable on limitation as demonstrated below:-

F.Y.	Period of ST-3	Due date of ST-3	Limitation period for issue of SCN
2014-15	Oct, 2014 to March, 2015	30.04.2015	starts from 30.04.2015 (relevant date)
Normal limitation period of issuing SCN (30 months) expired on			30.10.2017
Date of issue of SCN			30.12.2020

3.3 Authorized Representative re-iterated the findings recorded in the impugned order.

4.1 I have considered the impugned order along with the submissions made in appeal and during the course of arguments.

4.2 Impugned order records the findings as follows:

"4.6 First, I proceed to scrutinize the claim of them having provided works contract services to NKG Infrastructure, Paschimanchal Vidyut Vitran Nigam Ltd. and Technocraft Construction Pvt. Ltd. and accordingly benefit of Notification Nos. 24/2012-ST and 30/2012-ST is admissible to them. In this regard my findings are as under

4.6.1 As regarding receipt of consideration of Rs. 90420/- from NKG Infrastructure, I find that the TDS had been deducted under Section 194C of the Income Tax Act, 1961 which inter alia covers TDS on works contract service. Further, I find that the appellant has submitted copies of the following documents :: copy of letter bearing Ref. No. JC/NKG/PVVNL/005 dated 04.04.2011 (regarding PO for civil work of PVVNL at 33KV sub-station, Shahdubber, Muzaffarnagar, copy of hand written letter dated 14.11.2011 by the appellant to NKG Infrastructure regarding bill of Rs.7,58,983/-, copy of Form 27 Funning Account Bill dated 4.12.2010, and hand written letter dated 25.01.2012 by the appellant to NKG Infrastructure regarding bill of Rs.3,49,049/-, I find that the appellant has failed to corelate the said correspondences/bills of the year(s) 2011/2012 with the subject consideration of Rs. 90420/- received from NKG Infrastructure in month February 2015 (as per Form 26AS). Thus, in respect of the said consideration of Rs.90,420/-, the appellant is liable to pay service tax amounting to Rs. 11,176/- [12.36% of Rs.90,420/-1.

4.6.2 As regarding receipt of consideration of Paschimanchal Vidyut Vitran Nigam Ltd. as per Form 26AS for 2014-15, I find that the TDS had been deducted under Section 194C of the Income Tax Act, 1961 which inter alia covers TDS on works contract service. Further, I find that the appellant has submitted copies of two contracts/agreements viz. No. 01/14-15/E.E.,E.C.D., SRE dated 20.05.2014 (for Rs.40,46,436/-) and No. 20/14-15/E.E., E.C.D., SRE dated 14.11.2014 (for Rs.9,17,407.64) and further in this regard has submitted a certificate dated 11.03.2016 issued by the Office of the Executive Engineer, Electricity Civil Distribution Division, 33/11 K.V. Sub-station, Ghanta Ghar, Saharanpur wherein it has been certified that during 2014-15 the Appellant had received the payment of Rs.55,58,583.00 (before TDS of

2%). Thus, the total consideration received from Paschimanchal Vidyut Vitran Nigam Ltd. during 2014-15 is factually Rs. 55.58,583/-. Further, I find that the said two contracts were for 'Construction of Switch Gear Room Building, boundary wall, security wall, security fencing, main gate, security gate, approach road, septic tank, culverı, hand pump, and submersible pump, etc. at 33/11 KV sub-stations Kakda Bistrict Muzaffarnagar' and 'construction of boundary wall at 33/11 KV sub-stations-Kerana', respectively, and all the material for the said work had to be arranged for by the appellant. Thus. as is apparent, the said contracts were for the original work and so in terms of Rule 2A of the Service Tax (Determination of Value) Rules, 2006, as amended vide Notification No. 24/2012-ST dated 06.06.2012, the service tax was to be paid on forty per cent of the total amount charged for the works contract. Further, I find that the appellant firm was a proprietorship concern and with Paschimanchal Vidyut Vitran Nigam Ltd. being the service recipient, so in terms of Notification No. 30/2012-ST dated 20.06.2012, clause 1(A)(v) thereof and serial no. 9 of the table appended thereto, 50% of the tax liability was to be paid by the service provider ie. the appellant and the remaining 50% liability was to be discharged by the service recipient i.e. Paschimanchal Vidyut Vitran Nigam Ltd. Thus, I find that the service tax liability of the appellant in respect of services provided to Paschimanchal Vidyut Vitran Nigam Ltd. is as under:

Amount received as per 26 AS	*Gross Value*	*Taxable Value (40% of the Gross Value)*	*Service Tax @ 12.36%*	*RCM @ 50 %*	*Tax liability of the appellant*
					(Value in Rupees)
54,32,639. 00	*55,58,583. 00*	*22,23,433. 20*	*2,74,816. 34*	*1,37,408. 00*	*1,37,408. 00*

4.6.3 As regarding receipt of consideration of Rs.48,50,000/- from Technocraft Construction Pvt. Ltd. as per Form 26AS for 2014-15, I find that thereon too the

TDS had been deducted under Section 194C of the Income Tax Act, 1961 which inter alia covers TDS on works contract service. Further, I find that the appellant has submitted copies of the following documents:: copy of letter bearing Ref. NoLOI-02/Tehsil/Civil Work/13-14 dated 03.01.2014 (regarding LOI for civil work of PVVNL at 33/11 KV sub-station at Kairana Project entailing therein the condition that the work was to be completed upto 31.03.2014 and the payment shall be made within 10 days of the certification of bill by EE, ECDD, Saharanpur) and copies of running bills stating start date of project as 28.10.2013 and date of completion as 31.03.2014. I find that the appellant has failed to corelate the said correspondences/bills for work completed by 31.03.2014 with the subject consideration of Rs.48,50,000/- received from Technocraft Construction Pvt. Ltd. during the period April 2014 and December 2014 (as per Form 26AS). Thus, in respect of the said consideration of Rs.48,50,000/-, the appellant is liable to pay service tax amounting to Rs.5,99,460/- [12.36% of Rs.48,50,000/-].

4.6.4 Thus, in light of the foregoing facts and findings, the total service tax liability of the appellant in respect of the subject total consideration for the year 2014-15 is Rs. 7,48,044/- [Rs. 11,176/- + Rs. 1,37,408/- + Rs.5,99,460/-] and after adjustment of the service tax already paid by the appellant, the total amount of service tax short paid by the appellant during 2014-15 is as under:

Total service tax liability of the appellant in respect of consideration received during 2014-15 from NKG Infrastructure Paschimanchal Vidyut Vitran Nigam Ltd. and Technocraft Construction Pvt. Ltd] (as per above findings)	*Rs.7,48,044/-*
Service Tax already paid as per ST-3 return (as also stated in the subject SCN)	*Rs. 1,33,406/-*
Service Tax short paid by appellant in 2014-15	*Rs.6,14,638/-*

4.7 As regarding the contention of the appellant regarding the subject demand being baseless on the grounds that it has been raised on the basis of data received from the Income Tax Department and consequently the extended

period of tie limitation and perial provisions are not liable to be invoked in the subject case; I find that the said data sharing between the CBIC and CBDT is in terms of approved policy of the Government of India to inter alia track tax evasion and in this regard earlier an MOU was signed between the CBDT and the erstwhile CBEC in the year 2015 and later, with the introduction of GST and other allied changes, in supersession of the MOU signed in 2015 another MOU was signed between the CBDT and CBIC on 21.07.2020. I find that it is on the basis of the subject data received from the Income Tax Department that the subject short payment of service tax came to the notice of the Department. Had it not been for the receipt of the subject data from the Income Tax Department the subject short payment of service tax would have not come to the notice of the department for it was never the intention of the appellant to reveal the same on their own accord, as accentuated from the fact that the appellant had wilfully and deliberatively not declared the same in their statutory returns. Thus, I find that the ingredients to invoke the extended period of time limitation to raise the subject demand was intrinsically inherent in the facts of the subject case and consequently the penal provisions under Section 78 of the Finance Act, 1994 are automatically attracted. Further, I find that once it is established that ingredients to attract operation of Section 78 of the Finance Act, 1994 are present in a case, the discretion to quantify the amount of penalty ends. Accordingly, equivalent penalty under Section 78 has rightly been imposed upon the appellant. Further, penalty under Section 77(2) is also liable to be imposed upon the appellant for breach of provisions of the service tax rules in as much they had failed to correctly assess their service tax liability for the subject period. As regarding imposition of penalty upon the appellant under the provisions of Section 78 of the Finance Act, 1994, 1 find that the

foregoing findings unambiguously establishes the same, however, corroboratedly reliance is placed upon the pronouncement made in the following cases:

(i) Inox Leisure Limited Vs Commissioner of Service Tax, Mumbai [2016 (42)STR 497 (Trib-Mumbai)]:: Held:: Demand Limitation Extended period Invocation of -Suppression of facts - Responsibility cast on appellant to furnish details to authorities at prescribed frequency under Rule 7 of Service Tax Rules, 1994 and declare services rendered, assess tax due and make payment of Service Tax by due date - Non-payment of Service Tax came to light in pursuance to investigation - Extended period of limitation sustainable - There being suppression of fact. penalty under Section 78 of Finance Act. 1994 warranted - Interest payable - Appropriate penalties under Sections 76, 77 and 78 ibid payable.

This Order was upheld by the Hon'ble Supreme Court and in its judgement the Learned Court held that Demand Limitation Extended period invocable for failure of registered assessee to furnish details and to pay Service Tax under the Rule [2016 (44) STR J 276 (SC)];

(ii) Cairn Energy India Pvt. Ltd. Vs CCE & Cus., Visakhapatnam-II [2019 (27) G.S.T.L. 363 (Tri. - Hyd.)]: Held: Demand - Limitation - Extended period of - Assessee violating conditions of Finance Act, 1994 and Rules and failed to pay Service Tax with intent to evade tax - Extended period of limitation applicable.

[Affirmed in 2020 (32) GSTL J40 (Supreme Court)]

(iii) Lakhan Singh & Co. Vs CCE, Jaipur [2016(46)STR 297 (Trib-Delhi)] :: Held :: Demand - Limitation - Suppression - Suppression with intent to evade payment of duty -It is seldom done by actions leaving trails - Hence, "positive act" of suppression

cannot be something which can always be demonstrated through existence of a physical thing or document - It is about state of mind, which has to be judged from facts of case - Demand - Limitation - Suppression - Under self-assessment scheme, onus of assessee to disclose information to department has become more important Demand Limitation Suppression - If ignorance of law is not a defence, wrong understanding of law can be a much lesser defence,

(iv) *Prathyusha Associates Shipping P. Limited Vs CCE, C & ST, Visakhapatnam-I [2014 (36) STR 1145 (Trib-Bang)]: Held :: Demand - Limitation - Extended period -Where the responsibility of assessment is on assessee and not on the department, no one has the liberty to make assumption about the liability - Extended period of limitation invokable*

(v) *R S Joshi Vs Ajit Mills [AIR1977SC2279 = (1977)40STC497 = 1979UPTC171 (SC 7 Member Bench)]: Held "in economic crimes and departmental penalties, 'mens rea is not essential for imposing penalty":*

(vi) *UOI Vs Dharamendra Textile Processors [2008 (231) ELT 3 (SC)] :: Held :: "Penalty -Mandatory penalty- Lesser penalty not imposable - No discretion available on quantum of penalty under Section 11AC of Central Excise Act, 1944 - Mens rea not an essential ingredient thereunder" [Parallel provisions in Service Tax matters].*

(vii) *CCE & C, Aurangabad Vs Padmashri V. V. Patil S.S.K. Limited [2007 (215) ELT 23 (Bom)]:: Held :: Penalty-Quantum of- Evasion of excise dury - Discretion to reduce mandatory penalty - Section 11AC of Central Excise Act, 1944 providing for imposition of penalty equal to duty - Impugned Section 11AC ibid penal in nature and applicable*

when non-payment or short payment due to fraud, collusion, wilful misstatement or suppression of facts with intent to evade duty - Discretion to impose lower penalty than equal amount not provided - Penalty payable at 25% if duty determined paid within thirty days and no discretion to reduce 25% penalty in such cases - Supreme Court confirming Tribunal decision in 2003 (161) ELT. 285 rendered before amendment to relevant provisions - Penalty equal to duty imposable from 11-5-2001 if duty demand confirmed for intentional evasion-Section 11AC ibid. [Parallel provisions in Service Tax matters];

(viii) *UOI Vs Rajasthan Spinning & Weaving Mills [2009 (238) ELT 3 (SC)] :: Held :: Penalty Mandatory penalty under Section 11AC of Central Excise Act. 1944 not applicable to every case of non-payment or short-payment of duty - Conditions mentioned in Section 11AC ibid should exist for penalty thereunder - Authorities having no discretion on quantum and penalty equal to duty must be imposed once Section 11AC ibid is applicable. Parallel provisions in Service Tax matters].”*

4.3 Order in original records the findings as follows:

“Before issuance of Show Cause Notice many letters and a Summon was sent to the Noticee on 04/12/2020 and 14/12/2020 to submit documents and to ascertain the actual taxable value but nobody turned up. After issuance of Show Cause Notice also no defence reply/response received from the Noticee. In view of natural justice opportunity for personal hearing was granted to the Noticee. Shri S.K. Jain, of the firm appeared for hearing who submitted that-

"regarding difference in amount shown in ITR/26AS and ST-3 returns he submitted that they have done

civil work of Govt. Electricity Department and they have paid service tax correctly and properly. They have paid service tax on labour charges which is 40% of the Total Amount and on this they have deposited half service tax & half deposited by the Electricity Department. Further they submitted that in ITR/26AS amount received from M/s Technocraft Construction Co. is included but in this case whole amount of Service tax has been paid by M/s Technocraft. They promised that they will submit all detail/documents regarding this within 8-10 days."

But they have not submitted any detail/documents as mentioned in record of personal hearing. In this condition I have to rely only on the documents available in the record. As there is no doubt that they have received the said amount on account of services provided by them and also no defence reply received from the Noticee regarding receipt of the Amount Rs. 10373100/- thus they are agreed with the demand raised vide the said Show Cause Notice.. Thus, I find that the Noticee is liable to pay Service Tax amounting to Rs.1148709/-(Rupees Eleven Lac forty eight thousand seven hundred nine only) and the same is recoverable from them under Proviso to Section 73(1) of the Finance Act, 1994 along with interest at appropriate rate under Section 75 of the Finance Act, 1994 read with Section 83 of the Act, and further read with Section 38A of Central Excise Act, 1944 and Section 174 of the Central Goods and Services Tax Act, 2017.

I find that the party have will fully suppressed the material fact by way of showing gross amount Receipt as 'Detail not available for the period April 2014 to March 2015, instead of actual amount receipt/billed during the subject period with intent to evade payment of service tax, the extended period of limitation is invokable under Section 78 of the Finance Act, 1994 and thus the party is liable to pay

penalty under Section 78 of the Finance Act, 1994 read with Section 174 of the CGST Act. 2017.

Further, I find that the party has failed to furnish the information/documents sought by the jurisdictional office and failed to file ST-3 Returns as prescribed with proper value as narrated supra and therefore, by not furnishing the information/documents called for, the Noticee have rendered themselves liable to pay penalty under Section 77(2) of the Finance Act, 1994 for violation of Rule 7 of the Service Tax Rules, 1994.

4.4 It is observed that appellant is registered with the revenue authorities and was paying the service tax and also filing the ST-3 returns as prescribed in law. On comparison of the figures of gross receipts towards provision of services as provided by the income tax authority with the figures as depicted in the ST-3 returns filed for the period of 2014-15 by the appellant it was observed that there was mismatch which has resulted in short payment of service tax by the appellant. To investigate the issue summons were issued to the appellant for providing the relevant documents and appellant had not responded to the same or provided the documents as called for. Appellant has placed reliance on certain decisions of tribunal to argue that the show cause notice which has been issued on the basis of the income tax records cannot be upheld in absence of any investigation made to determine the liability of service tax. In case of Quest Engineers & Consultant Pvt. Ltd. [2022 (58) GSTL 345 (T-All)] following was held:

"12. *Appreciating the facts and circumstances, we find that the allegations of Revenue are frivolous, that it was only on enquiry it came to know about the affairs of the appellant, i.e. providing of taxable service in view of the admitted facts that appellant is a registered assessee under the Service Tax provision, and have been filing their returns and paying tax. It is not alleged by the Revenue that the appellant was not maintaining proper financial*

records, register and vouchers for their transaction. We further find that Form No. 26AS is not a statutory document for determining the taxable turnover under the Service Tax provisions. We find that Form No. 26AS is maintained on cash/ receipt basis by the Income Tax Department for the purpose of tax deducted at source, etc. being the relevant data for Income Tax. Whereas under the Service Tax provisions, the service tax is chargeable on mercantile basis (accrual basis) on the service provided whether the value of such service is received or not. Thus, we find that the whole basis of show cause notice is incorrect and/or misconceived."

4.5 In the present case the demand has been made by taking the gross receipts towards the provisions of services not from the 26AS of the appellant but on the basis of the declaration made by them in the income tax return filed by the him. Though 26AS is on the accrual basis, but the financial records and Income Tax Return is on the accrual basis or the mercantile basis. Post amendments made in the 2010, and introduction of the Point of Taxation Rules, 2011, the manner of determination of the Service Tax liability was shifted from the receipt basis to the accrual basis. This was done to align the provisions of the service tax, with general accounting standards followed in the country. Thus I find that this decision is distinguishable. The demand in that case was based on comparison of the figures in the 26AS with the ST-3 return, whereas in the present case it is based not on the same comparison but by comparing the figures of ST-3 return with those in the ITR of the appellant.

4.6 It is fact that the appellant while filing the ST-3 return had declared Gross Receipt from services which is must lower than the Gross Receipt as declared by him in his ITR. Section 67 of the Finance Act, 1994 provides as follows:

SECTION 67.Valuation of taxable services for charging service tax. —

(1) Subject to the provisions of this Chapter, where service tax is chargeable on any taxable service with reference to its value, then such value shall, —

(i) in a case where the provision of service is for a consideration in money, be the gross amount charged by the service provider for such service provided or to be provided by him;

(ii) in a case where the provision of service is for a consideration not wholly or partly consisting of money, be such amount in money as, with the addition of service tax charged, is equivalent to the consideration;

(iii) in a case where the provision of service is for a consideration which is not ascertainable, be the amount as may be determined in the prescribed manner.

(2) Where the gross amount charged by a service provider, for the service provided or to be provided is inclusive of service tax payable, the value of such taxable service shall be such amount as, with the addition of tax payable, is equal to the gross amount charged.

(3) The gross amount charged for the taxable service shall include any amount received towards the taxable service before, during or after provision of such service.

(4) Subject to the provisions of sub-sections (1), (2) and (3), the value shall be determined in such manner as may be prescribed.

Explanation. — For the purposes of this section, —

(a)"consideration" includes —

(i) any amount that is payable for the taxable services provided or to be provided;

(ii) any reimbursable expenditure or cost incurred by the service provider and charged, in the course of providing or agreeing to provide a taxable service,

except in such circumstances, and subject to such conditions, as may be prescribed;

(iii) any amount retained by the lottery distributor or selling agent from gross sale amount of lottery ticket in addition to the fee or commission, if any, or, as the case may be, the discount received, that is to say, the difference in the face value of lottery ticket and the price at which the distributor or selling agent gets such ticket.

*(b) [* * * *]*

(c)"gross amount charged" includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes and [book adjustment, and any amount credited or debited, as the case may be, to any account, whether called "Suspense account" or by any other name, in the books of account of a person liable to pay service tax, where the transaction of taxable service is with any associated enterprise.

To further examine the issue it becomes necessary to look into the format of the ST-3 return wherein the appellant was required to declare the gross receipts towards the services and then determine the taxable value after claiming any abatements.

B. Value of taxable service and service tax payable 9to be displayed service wise)

Month/Quarter		Apr Oct	May Nov	Jun Dec	Jul Jan	Aug Feb	Sep Mar
B1.1	Gross amount (excluding amounts received in advance, amounts taxable on receipt basis, for which bills/ invoices/ challans or any other document may not have been issued) for which bills/ invoices/ challans or any other document are issued relating to service provided or to be provided (excluding export of service and exempted service)						
B1.2	Amount received in advance for which bills/ invoices/ challans or						

	any other document have not been issued.						
B1.3	Amount taxable on receipt basis under third proviso to rule 6(1) of the Service Tax Rules, 1994 for which bills/ invoices/ challans or any other document have not been issued						
B1.4	Amount taxable for services provided for which bills/ invoices/ challans or any other document have not been issued.						
B1.5	Money equivalent of other consideration charged, if any, in a form other than money						
B1.6	Amount on which service atx is payable undere partial reverse charge						
B1.7	Gross Taxable Amount B1.7=B1.1+B1.2+B1.3+B1.4+B1.5+B1.6						
B1.8	Amount charged against export of service provided or to be provided						
B1.9	Amount charged for exempted service provided or to be provided (other than export of service, given at B1.8 above)						
B1.10	Amount charged as pure agent						
B1.11	Abatement amount claimed						
B1.12	Any other amount claimed as deduction, please specify.						
B1.13	Total Amount claimed as deduction B1.13=B1.8+B1.9+B1.10+B1.11+B1.12						
B1.14	Net Taxable value =B1.7-B1.13						

From the perusal of the 26AS return of the appellant for the period in dispute it is observed that appellant was receiving/charging these amounts towards the provision of the work contract services. He was required to declare the exact amount received B1.1 to B1.5 and then claim the deduction/ abatement at B1.8 to B1.12. It is not in dispute in fact it was the submission of the appellant that he had paid the service tax on the receipts after reducing the same by the abatements. It is settled position in law that when the statue prescribes a manner for performance than the act should be performed in that manner only. A three-Judge Bench of the Hon’ble Supreme Court

in Chandra Kishore Jha v. Mahavir Prasad & Ors. [(1999) 8 SCC 266] observed as follows:

> *"17……..It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. (See with advantage: Nazir Ahmad v. King Emperor [(1935-36) 63 IA 372 : AIR 1936 PC 253 (II)] , Rao Shiv Bahadur Singh v. State of V.P. [AIR 1954 SC 322 : 1954 SCR 1098] , State of U.P. v. Singhara Singh [AIR 1964 SC 358 : (1964) 1 SCWR 57] .) An election petition under the rules could only have been presented in the open court up to 16-5-1995 till 4.15 p.m. (working hours of the Court) in the manner prescribed by Rule 6 (supra) either to the Judge or the Bench as the case may be to save the period of limitation. That, however, was not done……."*

The same principle was followed by the Hon'ble Supreme Court in following cases:

- Chandra Kishore Jha v. Mahavir Prasad & Ors. [(1999) 8 SCC 266]
- Cherukuri Mani v. Chief Secretary, Government of Andhra Pradesh & Ors. [(2015) 13 SCC 722]
- Municipal Corporation of Greater Mumbai (MCGM) v. Abhilash Lal & Ors. [(2020) 13 SCC 234]
- OPTO Circuit India Limited v. Axis Bank & Ors. [(2021) 6 SCC 707].

Thus appellant was required to declare the gross amount charged/ received by him in the ST-3 towards the specific services provided by him. If that had been the case the amounts declared in the ST-3 return would be same as those declared in ST-3 returns. By not filling the returns in the prescribed manner appellant deliberately and knowingly suppressed the Gross Amounts charged/ received toward the provision of the taxable service with intention to evade the payment of due service tax. Impugned order has relied upon a number of orders including

those of Hon'ble Supreme Court wherein it has been held that extended period of limitation for making the demand is invokable in these circumstances. Counsel for appellant has not made any submission on any of the decisions relied in the impugned order.

4.7 It is also not the fact that revenue based the demand entirely on the information received from Income Tax department without causing any investigations. In facts information was called from the appellant and even summons dated 04.12.2020 and 14.12.2020 was issued to the appellant. Appellant chose not to respond by providing the requisite documents or appearing against the summons. It is a settled position in law that no person can claim the benefit of his own wrongs in any proceedings (*Commodum ex injuria sua nemo habere debet or Nullus commodum capere potest de injuria sua propria, it dictates that no party can gain an advantage from a breach of their own obligation).* In the case of Machhindranath S/O Kundlik Tarade Vs Ramchandra Gangadhar Dhamne & Ors.[Order dated 02.06.2025 in Special Leave Petition (Civil) NO.7728 OF 2020], Hon'ble Supreme Court observed as follows:

> *32. Undoubtedly, the present case comes under a unique category where a person on the one hand comes before a Court seeking that his own actions be nullified on the ground that it was void and on the other hand wants relief in his favour, which is consequential to and traceable to his own wrong. It would not be proper for a Court of law to assist or aid such person who states that the wrong he committed be set aside and a relief be granted de hors the wrong committed, after condoning the same. In the present case, the plaintiff cannot be allowed to benefit from his own wrong and the Court will not be a party to a perpetuation of illegality. In Ram Pyare v Ram Narain, (1985) 2 SCC 162, a 3-Judge Bench of this Court, in the circumstances therein, did not void a transaction even though the transaction was void being prohibited by law. The principle that no party can take advantage of his/her*

own wrong i.e. ex injuria sua nemo habere debet is squarely attracted. In Kusheshwar Prasad Singh v State of Bihar, (2007) 11 SCC 447, following was held:

> *'13. The appellant is also right in contending before this Court that the power under Section 32-B of the Act to initiate fresh proceedings could not have been exercised. Admittedly, Section 32-B came on the statute book by Bihar Act 55 of 1982. The case of the appellant was over much prior to the amendment of the Act and insertion of Section 32-B. The appellant, therefore, is right in contending that the authorities cannot be allowed to take undue advantage of their own default in failure to act in accordance with law and initiate fresh proceedings.*
>
> *14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in Mrutunjay Pani v. Narmada Bala Sasmal [AIR 1961 SC 1353] wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim commodum ex injuria sua nemo habere debet (no party can take undue advantage of his own wrong).*
>
> *15. In Union of India v. Major General Madan Lal Yadav [(1996) 4 SCC 127: 1996 SCC (Cri) 592] the accused 27 of 29 army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that*

presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were timebarred. This Court (at SCC p. 142, para 28) referred to Broom's Legal Maxims (10th Edn.), p. 191 wherein it was stated:

> *"It is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."*

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong".'

(emphasis supplied)

33. On an overall circumspection, the learned Single Judge and the Division Bench have not committed any error.

4.8 As I find that appellant has suppressed the gross amounts received by not stating the same in their ST-3 return with the intent to evade payment of service tax, I find that extended period of limitation as per proviso to Section 73 (1) of the Finance Act, 1994 has been rightly invoked for making the demand. During the course of the argument counsel for appellant stated that the show cause notice could not have been issued after expiry of five years from the relevant date, even when Supreme Court taking note of prevailing pandemic conditions have by its order in Suo Motto Writ Petition No 3 of

2022 has extended the period of limitation for the institution of legal proceedings. Authorized representative had argued against. This ground was not taken by the appellant before the lower authorities or even in the appeal filed or in the written submissions filed by the counsel at the time of hearing. Counsel for the Appellant was asked to provide a submission with the relevant case laws on the subject within 15 days. However even after expiry of near a month counsel has not filed any submission in this regard. I find that this ground has been rejected by the Hon'ble High Court of Telangana in the case of Brunda Infra Pvt. Ltd. [2025 (95) G.S.T.L. 43 (Telangana)] after taking note of the decisions of Hon'ble Supreme Court and other High Courts observing as follows:

> ***"Suo motu orders of Supreme Court relating to extension of COVID-19 pandemic :***
>
> *103. The parties are at logger heads on the aspect whether the orders of Supreme Court in suo motu jurisdiction can be pressed into service.*
>
> *104. Sri S. Ravi, Learned Senior Counsel and Sri Sreedharan, Learned Senior Counsel, have taken pains to submit that as per the C.B.I. & C. Circular No. 157/13/2021-GST, dated 20-7-2021, the Department itself understood that said COVID-19 related extensions granted by Supreme Court cannot be made applicable in the proceedings under Section 73/quasi judicial proceedings under the GST Act. Interestingly, Sri Nishant Mishra, Learned Counsel for the petitioners submitted that despite directions of Supreme Court in suo motu jurisdiction extending limitation, the Department issued impugned notifications. Thus, they have waived their right to take benefit of extension of limitation as per the order of Supreme Court. He placed reliance on the judgment of Supreme Court in Arce Polymers (P) Ltd. (supra).*
>
> *105. Before dealing with this argument, it is apposite to consider the orders of Supreme Court, passed time to*

time, in suo motu Writ Petition (C) No. 3 of 2020. On 23-3-2020, as rightly pointed out by Sri Dominic Fernandes this first order was related to Section 29A of the Arbitration and Conciliation Act, 1996 and the Negotiable Instruments Act. However, on 8th March, 2021, in the said suo motu jurisdiction, the following directions were passed :

> *"2. We have considered the suggestions of the Learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions :-*
>
> *1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-3-2020 till 14-3-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-3-2020, if any, shall become available with effect from 15-3-2021.*
>
> *2. In cases where the limitation would have expired during the period between 15-3-2020 till 14-3-2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15-3-2021. In the event the actual balance period of limitation remaining, with effect from 15-3-2021, is greater than 90 days, that longer period shall apply.*
>
> *3. The period from 15-3-2020 till 14-3-2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."*

[Emphasis Supplied]

106. Likewise, on 27-4-2021 [2021 (48) G.S.T.L. 225 (S.C.) = 2021 (376) E.L.T. 401 (S.C.)], the Supreme Court directed as under :

> *"We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant-public in all the states. We, therefore restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.*
>
> *It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.*
>
> *We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding order within the meaning of Article 141 on all Courts/Tribunals and Authorities."*

[Emphasis Supplied]

107. On 23-9-2021 [2021 (54) G.S.T.L. 3 (S.C.) = 2021 (378) E.L.T. 241 (S.C.)], the Supreme Court again ordered as under :

> *"8. Therefore, we dispose of the M.A. No. 665 of 2021 with the following directions :-*
>
> *(I) In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15-3-2020 till 2-10-2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15-3-2021, if any, shall become available with effect from 3-10-2021.*
>
> *(II) In cases where the limitation would have expired during the period between 15-3-2020 till 2-10-2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 3-10-2021. In the event the actual balance period of limitation remaining, with effect from 3-10-2021, is greater than 90 days, that longer period shall apply.*
>
> *(III) The period from 15-3-2020 till 2-10-2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."*
>
> *[Emphasis Supplied]*

108. Lastly, on 10-1-2022 [2022 (56) G.S.T.L. 385 (S.C.) = 2022 (379) E.L.T. 276 (S.C.)], the Supreme Court directed as under :

> *"(III) In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.*
>
> *(IV) It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."*
>
> *[Emphasis Supplied]*

109. A conjoint reading of these orders, make it clear that the direction of Supreme Court for excluding the period of limitation is not confined to only Arbitration and Conciliation Act, Commercial Courts Act and Negotiable Instruments Act. The directions were extended in relation to "any other laws which prescribe period(s) of limitation for instituting proceedings". It cannot be doubted that Section 73 is one of such provision whereby proceeding can be instituted.

110. We will be failing in our duty if argument of Sri V. Bhaskar Reddy, Learned Senior Counsel, is not considered

based on the portion which is within bracket in para IV of order of Supreme Court dated 10-1-2022. The contention of Learned Senior Counsel was that it relates to such limitation for instituting proceedings where outer limit is prescribed in relation to any proceeding of Court or Tribunal. The superficial reading of this direction No. IV can certainly lead to such confusion. However, a microscopic reading of para IV shows that there exists a "comma" between the expression …. 'and any other laws, which prescribe period(s) of limitation for instituting proceeding' and 'outer limits (within which the Court or Tribunal can condone the delay)'. The punctuation has great significance in this paragraph. The "comma" is also used in similar manner by Supreme Court when direction was issued on 23-9-2021.

111. Justice G.P. Singh in Principle of Statutory Interpretation (12th Edition) recorded thus :

6. Punctuation

> *"……When a statute is carefully punctuated and there is doubt about its meaning, a weight should undoubtedly be given to punctuation…."*
>
> *".....But it would appear, at any rate, with respect to modern statutes. State that if the statute in question is found to be careful punctuated, punctuation, though a minor element, may be resorted to for purposes of construction. An illustration of the aid derived from punctuation may be furnished from the case of Mohd. Shabbir v. State of Maharashtra (AIR 1979 SC 564) where section 27 of the Drugs and Cosmetics Act, 1940 came up for construction. By this section whoever 'manufactures for sale, sells, stocks or exhibits for sale or distributes a drug without a licence is liable for punishment. In holding that mere stocking is not an offence within the section, the Supreme Court pointed out the presence*

of comma after 'manufactures for sale' and 'sells' and absence of any comma after 'stocks'. It was, therefore, held that only stocking for sale could amount to offence and not mere stocking. For another example of the use of punctuation, reference may be made to M.K. Salpekar (Dr.) Sunil Kumar Shamsunder Chaudhari (AIR 1988 SC 1841) where the court construed clause 13(3)(v) of the C.P. and Berar Letting of Houses and Rent Control Order. This provision permits ejectment of a tenant on the ground that "the tenant has secured alternative accommodation, or has left the area for a continuous period of four months and does not reasonably need the house". In holding that the requirement that the tenant 'does not reasonably need the house' has no application when he 'has secured alternative accommodation' the court referred and relied upon the punctuation comma after the words alternative accommodation…."

(Pages 173-174)

112. The Apex Court in Kantaru Rajeevaru v. Indian Young Lawyers Assn. [(2020) 9 SCC 121] held as under :

"18. When a statute is carefully punctuated and there is doubt about its meaning, weight should undoubtedly be given to the punctuation. [See : Crawford : Interpretation of Law (Statutory Construction).]..."

[Emphasis Supplied]

113. The order of Supreme Court is carefully punctuated by providing a 'comma' as highlighted above and therefore weight must be given to such punctuation. In this view of the matter, we are unable to hold that the order of Supreme Court was confined to such proceedings alone which were pending in the Court or Tribunal.

114. The aforesaid orders of the Supreme Court leave no room for any doubt that the power was exercised under Article 141/142 of the Constitution. In peculiar situation like COVID-19, the Supreme Court exercised its extraordinary power and declared the law for the nation. This is trite that while a judgment of a Court binds only the parties to the litigation before it, a judgment of Supreme Court is something more, by virtue of Article 141/142, it declares the law for the nation (see Ganga Sugar Corporation Limited v. State of Uttar Pradesh [AIR 1980 SC 286]). The directions issued by Supreme Court in suo motu jurisdiction binds the entire nation and it cannot be said that the same are inapplicable in the present proceedings. A Constitution Bench of Apex Court in CCE v. Ratan Melting & Wire Industries [(2008) 13 SCC 1 = 2008 (12) S.T.R. 416 (S.C.) = 2008 (231) E.L.T. 22 (S.C.)] has drawn the curtains and held as under :

> *"7. Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."*
>
> *[Emphasis Supplied]*

This view is recently followed by the Supreme Court in Commissioner of Central Excise and Service Tax, Rohtak v. Merino Panel Product Limited [(2023) 2 SCC 597 = 2023 (383) E.L.T. 129 (S.C.) = (2022) 1 Centax 59 (S.C.)].

115. We concur with the view taken by the Patna High Court. The High Court, in our respectful view, rightly opined that issuance of impugned notifications may be an exercise in abundant caution. Relevant portion reads as under :

> *"40. We emphasize that insofar as the three-year period; relatable to the statutory limitation, there is substantial exclusion, as provided for by the Hon'ble Supreme Court in Para-1 of the directions in its decision. Hence, it is paragraph-5(I) which is applicable to the instant case, and not paragraph-5(III) and there can be no ground raised that the issuance of orders should have been within three months from 28-2-2022, especially since, as per the extension of time for filing final returns, the limitation for the years of 2017-2018, 2018-2019 and 2019-2020 would have fallen only on 7-2-2023, 31-12-2023 and 31-3-2024; all of which fall after 28-2-2022. The entire period or portions of the period excluded by the Hon'ble Supreme Court, fall within the three year limitation period in each of the subject years, as we have already detailed. The limitation hence stand extended to the extent of the periods exempted by the Hon'ble Supreme Court. However, since notifications are issued by the respective Governments extending the period of limitation, necessarily the limitation for the three subject years would stand extended only to that notified.*

41. We find absolutely no reason to interfere with the orders passed, on the ground of limitation."
[Emphasis Supplied]

116. In Olga Tellis v. Bombay Municipal Corporation [(1985) 3 SCC 545], the Supreme Court held that there can be no estoppel against the constitution. It was further held that plea of estoppel is closely connected with the plea of waiver. The object of both being is to ensure bona fides in day to day transactions. In view of foregoing analysis, we are constrained to hold that order of Supreme Court dated 10-1-2022 passed in suo motu Writ Petition (Civil) No. 3 of 2020, is indeed, applicable to the proceeding under the GST Act. Thus, the question of validity of notifications pales into insignificance. Since the period between 15-3-2020 to 28-2-2022 stood excluded for the purpose of counting limitation by an order which became law of the land, the remaining argument relating to validity of notifications became academic in nature. After excluding limitation from 15-3-2020 to 28-2-2022, it cannot be said that action of respondents in proceeding against the petitioners is barred by limitation.

117. The COVID-19 Pandemic created extraordinary difficulties which could not have been anticipated, measured and solved with mathematical precision. COVID-19 was not a creation of Government. Thus, hair-splitting in many aspects must be eschewed. For example, the argument of Sri Karthik Ramana Puttamreddy that in the initial notification extending limitation, 'spread of COVID' was shown as a reason which cannot be a justification for issuance of impugned notifications issued after COVID-19 was over. While dealing with such an extraordinary crisis, Government's action must be viewed in a broad perspective.

118. In view of our finding that period between 15-3-2020 to 28-2-2022 stood excluded for limitation as per

Supreme Court's order, remaining points raised by the petitioners relating to legality of impugned notifications need not be dealt with."

4.9 Thus I do not find any merits in the submissions made by the appellant to effect that the demand is barred by limitation.

4.10 Appellant has claimed that Service Tax in respect of the services provided by them was paid by the main contractor i.e. Technocraft Construction Pvt. Ltd. and they as sub contractor were not required to pay any service tax. However I do not find any merits in the said submission, in view of decision of the larger bench in case of Melange Developers Private Limited [2020 (33) G.S.T.L. 116 (Tri. - LB)]. This decision was followed by the Mumbai Bench in case of Om Sai Fabricators [(2023) 6 Centax 208 (Tri.-Bom)] and following was observed:

***"4.3** On merits we find that issue has been decided by larger bench of tribunal in the case of Melange Developers Private Limited [2020 (33) G.S.T.L. 116 (Tri. - LB) wherein larger bench has held as follows:*

"12. It is true that prior to 2007, various Service Tax, Trade Notices/ Instructions/ Circulars/ Communications had been issued exempting certain category of persons from payment of Service Tax. A sub-contracting Customs House Agent was exempted from payment of Service Tax on the bills raised on the main Customs House Agent. When an architect or interior decorator sub-contracted part/whole of its work to another architect or interior decorator, then no Service Tax was required to be paid by the sub-contractor, provided the principal architect or interior decorator had paid the Service Tax. However, all these Trade Notices/Instructions/Circulars/Communications were superseded by the Master Circular dated 23 August, 2007 issued by the Government of India, Ministry of Finance. The Circular noticed that when Service Tax

was introduced in the year 1994 there were only three taxable services, but later 100 services had been specified as taxable services and that since the introduction of Service Tax, number of clarifications had been issued, but it had become necessary to take a comprehensive review of all the clarifications keeping in view the changes that had been made in the statutory provisions, judicial pronouncements and other relevant factors. The relevant portion of the Master Circular, insofar as it relates to sub-contractors, is reproduced below :

999.03/ 23-8-2007	*A taxable service provider outsources a part of the work by engaging another service provider, generally known as sub-contractor. Service tax is paid by the service provider for the total work. In such cases, whether service tax is liable to be paid by the service provider known as subcontractor who undertakes only part of the whole work.*	*A sub-contractor is essentially a taxable service provider. The fact that services provided by such sub-contractors are used by the main service provider for completion of his work does not in any way alter the fact of provision of taxable service by the sub-contractor.* *Services provided by sub-contractors are in the nature of input services. Service tax is, therefore, leviable on any taxable services provided, whether or not the services are provided by a person in his capacity as a subcontractor and whether or not such services are used as input services. The fact that a given taxable service is intended for use as an input service by another service provider does not alter the taxability of the service*

provided.

13. The Master Circular clarifies that the services provided by sub-contractors are in the nature of input services and since a sub-contractor is a essentially taxable service provider, Service Tax would be leviable on the taxable services provided. It has also been clarified that even if a taxable service is intended for use as an input service by another service provider, it would still continue to be a taxable service.

14. It can be used that if a main contractor has paid Service Tax on the entire amount of the main contract out of which a portion has been given to a sub-contractor, then if a subcontractor is required to pay Service Tax, it may amount to 'Double Taxation', but this issue has to be examined in the light of the credit mechanism earlier introduced through Service Tax Credit Rules, 2002 granting benefit of tax paid on input services if the input services and the output services fell under the same taxable services and the subsequent amendment made on 14 May, 2003 granting benefit of tax paid on input services even if the input service and the output service belonged to different taxable categories. The aforesaid Service Tax Credit Rules were later superseded on 10 September, 2004 by Cenvat Credit Rules, 2004. Rule 3 of these Rules provides that a manufacturer or producer of final product or a provider of output service shall be allowed to take credit (known as 'Cenvat Credit') of various duties under the Excise Act, including the Service Tax leviable under sections 66, 66A and 66B of the Act. Rule 3(4) further provides that Cenvat credit may be utilized for payment of Service Tax on any output service. It is for this reason that the Master Circular dated 23

August, 2007 was issued superseding all the earlier Circulars, Clarifications and Communications.

15. It is not in dispute that a sub-contractor renders a taxable service to a main contractor. Section 68 of the Act provides that every person, which would include a sub-contractor, providing taxable service to any person shall pay Service Tax at the rate specified. Therefore, in the absence of any exemption granted, a sub-contractor has to discharge the tax liability. The service recipient i.e. the main contractor can, however, avail the benefit of the provisions of the Cenvat Rules. When such a mechanism has been provided under the Act and the Rules framed thereunder, there is no reason as to why a sub-contractor should not pay Service Tax merely because the main contractor has discharged the tax liability. As noticed above, there can be no possibility of double taxation because the Cenvat Rules allow a provider of output service to take credit of the Service Tax paid at the preceding stage.

16. It is in this light that the main contention of Learned Counsel for the Respondent that if a sub-contractor is required to pay Service Tax when the main contractor has actually discharged Service Tax liability, it would amount to 'Double Taxation', has to be examined. For this contention, reliance has been placed by the Learned Counsel for the Respondent on the following decisions of this Tribunal :

(i) Urvi Construction v. Commissioner of Service Tax, Ahmedabad, reported in 2010 (17) S.T.R. 302 (Tri. - Ahmd.);

(ii) BCC Developers and Promoters Pvt. Ltd. v. Commissioner of Central Excise, Jaipur, reported in 2017 (52) S.T.R. 22 (Tri. -Del.);

(iii) M/s. Dhaneshra Engineering Works v. Commissioner of Central Excise, Allahabad, reported in 2018 (2) TMI 788 -CESTAT - Allahabad;

(iv) Power Mech Projects Ltd. v. Commissioner of Customs, Guntur, reported in 2017 (48) S.T.R. 165 (Tri.- Hyd.); and

(v) M/s. Edac Engg. Ltd. v. CST, Chennai, reported in 2017 (6) TMI 685 CESTAT Chennai.

17. In Urvi Construction a Learned Member of the Tribunal observed :

> *"2. . Further the learned advocate also submits that in the Master Circular issued by the Board vide Circular No. 96/7/2007-S.T., dated 23-8-2007, a stand has been taken that there is no exemption to a sub-contractor from payment of service tax merely because the contractor pays the tax. However, he submits that for the period circular issued late by the Board in 1997 was applicable and according to this Circular where the services have been provided by the sub-contractors such sub-contractors are not liable to pay service tax and service tax liability is on the main contractor. Taking note of the fact of the contention that main contractor has paid the service tax and charging service tax on the sub-contractor again would amount to taxing the same service twice and also taking note of the circular cited by the learned advocate and the decisions of the Tribunal cited, I find that if the appellant is required to pay the service tax it would amount to taxing the same service twice and the circular and the Tribunal's decision are squarely applicable to the facts of this case and accordingly appeal is allowed with consequential relief to the appellant."*

18. In BCC Developers and Promoters Pvt. Ltd. it was observed :

> *"6.1 We agree with the submission of the Ld. Counsel that no double taxation is permissible*

under the law. The Constitution (Article 265) provides to take the exact amount of tax i.e. neither more nor less. In the instant case, if the principal has already paid the Service Tax, then the same cannot be demanded from the appellant. As per the clarification of the Board's Circular dated 23-8-2007 as well as dated 7-10-1998, if the principal had not paid the Service Tax then the same can be charged. If the Service Tax has already been paid by the principal, then the same cannot be demanded again."

19. M/s. Dhaneshra Engineering Works followed the aforesaid decision in BCC Developers and Promoters Pvt. Ltd.

20. In M/s. Edac Engg. Ltd., the Division Bench, after placing reliance upon the decision of the Tribunal in Urvi Construction, observed :

"6.2 We are therefore of the considered opinion that these case laws are distinguishable from the decision taken by this very Bench in the case of the present appellants Edac Engineering Ltd. in Final order dated 19-12-2016. We also find that the very same Board's Circular No. 97/8/2007-S.T., dated 23-8-2007, relied upon by the Ld. AR has been taken note of by the Tribunal in Urvi Construction (supra). This being so, we have no hesitation in ruling that when Service Tax has been paid by the main contractor, charging the subcontractor again will amount to taxing the same service twice. In the circumstances, the issue at hand also requires to be remanded to the adjudicating authority to verify whether the service rendered by the appellant has

suffered tax in the hands of the principal contracts. If that aspect is able to be proved by the appellants, no tax liability will accrue to them. Towards this end, the adjudicating authority will give suitable opportunity to the appellants to present their case. Appellants are also produce all evidence and documents to establish their claim that the tax liability required to be discharged by them has already been paid up by the main contractor. If that is provided, their will obviously be no demand for interest unless such demands have been made belatedly. Once this aspect is also able to be proved by the appellant, imposition of penalty will also not arise."

21. The aforesaid decisions do not take into consideration the impact of the Cenvat Rules. It would, therefore, not be correct to conclude that double taxation would result if a sub-contractor is required to discharge the Service Tax liability even if the main contractor has discharged the tax liability.

22. The decisions of the Tribunal holding that double taxation will not result if a sub-contractor discharges the tax liability because of the Cenvat Rules, now need to be referred to.

23. In Max Tech Oil & Gas Services Pvt. Ltd. v. Commissioner of Service Tax, Delhi, reported in 2017 (52) S.T.R. 508 (Tri. - Del.), the Division Bench has held :

"6. Regarding the contention of the appellant that they have acted only as a sub-contractor and demanding service tax from them will amount to double taxation as the main contractor also is rendering similar service to ONGC, we find no legal basis for the contention

of the appellant. The service tax leviable at the hands of each service provider is decided by nature of activities undertaken by them. If the same is covered by scope of the taxable entry under Finance Act, 1994 tax liability arises. The said service becomes part of final service rendered by main contractor is of no consequence to determine the tax liability of each and every service provider. If at all, the service tax paid by a sub-contractor which becomes part of service further provided by the main contractor, the scheme of credit as envisaged by the Cenvat Credit Rules, 2004 will come into play subject to fulfilment of conditions therein. It is nobody's case that the sub contractors per se are not liable to service tax even if they rendered taxable service " [Emphasis Supplied]

24. The same view was taken by the Division Bench of the Tribunal in CCE & S.T., Raipur v. M/s. J.K. Transport, reported in 2017 (9) TMI 993 - CESTAT New Delhi. The relevant paragraph is reproduced below :

"5. We find that the CBEC vide Circular dated 23-8-2007 has clarified that the services provided by the sub-contractor is a taxable service, even if the same is used for completion of the work by the main service provider. Thus, for providing the taxable service, the sub-contractor is liable for payment of service tax on provision of such service....."

25. Similar views were taken by the Tribunal in (i) Max Logistics Ltd. v. Commissioner of Central Excise, Raipur, reported in 2017 (47) S.T.R. 41 (Tri. - Del.);

(ii) Hargovind Electric Decorators v. Commissioner of Central Excise, Jaipur-I, reported in 2016 (43) S.T.R. 619 (Tri. - Del.); and (iii) Sew Construction Ltd. v. Commissioner of Central Excise, Raipur, reported in 2011 (22) S.T.R. 666 (Tri. - Del.).

26. At this stage, it would also be useful to refer to a Larger Bench decision of the Tribunal in Vijay Sharma & Company v. CCE, Chandigarh, reported in 2010 (20) S.T.R. 309 (Tri. - LB). The issue that arose before the Larger Bench was as to whether service provided by a sub-broker are covered under the ambit of Service Tax and taxable or not. After noticing that a subcontractor is liable to pay Service Tax, the Larger Bench examined as to whether this would result in double taxation if the main contractor has also paid Service Tax and observed that if service tax is paid by a sub-broker in respect of same taxable service provided by the stock broker, the stock broker is entitled to the credit of the tax so paid in view of the provisions of the Cenvat Credit Rules. The relevant paragraph 9 is reproduced below :

> *"9. It is true that there is no provision under Finance Act, 1994 for double taxation. The scheme of service tax law suggest that it is a single point tax law without being a multiple taxation legislation. In absence of any statutory provision to the contrary, providing of service being event of levy, self same service provided shall not be doubly taxable. If Service tax is paid by a sub-broker in respect of same taxable service provided by the stock-broker, the stock broker is entitled to the credit of the tax so paid on such service if entire chain of identity of sub-broker and stock*

broker is established and transactions are provided to be one and the same. In other words, if the main stock broker is subjected to levy of service tax on the self same taxable service provided by sub-broker to the stock broker and the sub-broker has paid service tax on such service, the stock broker shall be entitled to the credit of service tax. Such a proposition finds support from the basic rule of Cenvat credit and service of a sub-broker may be input service provided for a stock-broker if there is integrity between the services. Therefore, tax paid by a sub-broker may not be denied to be set off against ultimate service tax liability of the stock broker if the stock broker is made liable to service tax for the self same transaction. Such set off depends on the facts and circumstances of each case and subject to verification of evidence as well as rules made under the law w.e.f. 10-9-2004. No set off is permissible prior to this date when sub-broker was not within the fold of law during that period."

27. The Commissioner did express in the impugned order that under the Cenvat Scheme every stage of provision of service is required to be taxed and if a sub-contractor discharges the Service Tax liability, it will not result in double taxable even if the main contractor discharges the Service Tax liability because the credit of the earlier tax paid is available at a subsequent stage, but it is because of the decision of the Tribunal in Urvi Construction, that the Commissioner held that double taxation would result if a sub-contractor is also required to discharge Service Tax liability when the main contractor has discharged the entire liability.

28. Learned Counsel for the Respondent has, however, relied upon the decision of the Supreme Court in Larsen and Toubro Ltd. v. Additional Deputy Commissioner of Commercial Taxes and Anr., reported in 2016-TIOL-155-SC-VAT. In this case, the contracts which were secured by the Appellant therein were works contract and a part thereof was assigned to the subcontractor who had submitted returns and paid taxes for the execution of the works contract. During the course of the assessment, the Appellant submitted that the sub-contractors had already been taxed and, therefore, the Appellant cannot be taxed again under section 6B of the Karnataka Sales Tax Act. The submission, therefore, was that the value of the work entrusted to the sub-contractors could not be taken into account while computing the total turnover of the Appellant for the purpose of taxation under the Karnataka Sales Tax Act. It is in view of the provisions of the Karnataka Sales Tax Act that the Supreme Court observed that the value of the work entrusted to the sub-contractors or payments made to them shall not be taken into consideration while computing total turnover for the purposes of Section 6B of the Karnataka Sales Tax Act. This decision of the Supreme Court will not come to the aid of the Respondent in this case in view of the specific provisions of Section 66 and 68 of the Act as also the Cenvat Rules discussed in the foregoing paragraphs of this order. It also needs to be noted that there is no provision for input tax credit on deemed sales in levy of VAT.

29. The submission of the Learned Counsel for the Respondent regarding 'revenue neutrality' cannot also be accepted in view of the specific provisions of Section 66 and 68 of the Act. A subcontractor has to

discharge the Service Tax liability when he renders taxable service. The contractor can, as noticed above, take credit in the manner provided for in the Cenvat Credit Rules of 2004.

30. Thus, for all the reasons stated above, it is not possible to accept the contention of the Learned Counsel for the Respondent that a sub-contractor is not required to discharge Service Tax liability if the main contractor has discharged liability on the work assigned to the sub-contractor. All decisions, including those referred to in this order, taking a contrary view stand overruled.

31. The reference is, accordingly, answered in the following terms :

"A sub-contractor would be liable to pay Service Tax even if the main contractor has discharged Service Tax liability on the activity undertaken by the sub-contractor in pursuance of the contract."

4.4 *Appellant do not challenge the above position and agree that the issue is squarely covered by the decision of larger bench of tribunal. However they challenge the demand on the ground of limitation and have also claimed that abatement as per the Notification No. 15/2004-ST dated 10-9-2004.*

4.7 *…….*

4.8 *To argue on the limitation appellant have pressed the ground of bonafide belief and for that reason they rely upon the certificate issued to them by M/s Gammon. They also submit that there were conflicting views in the matter. However on query from the bench the counsel for appellant was unable to point out to a single decision available during the relevant period giving a contrary view. Further the submission to the effect that there were*

conflicting circulars is also not borne out by any evidence. Larger bench has in case of Melange Developer Pvt Ltd. clearly in para 12 noted that all Trade Notices/Instructions/Circulars/Communications were superseded by the Master Circular dated 23 August, 2007, and this circular had clarified the liability of sub contractor to pay the service tax. It is settled law that bona fide belief is not the blind belief and needs to be established. Hon'ble Bombay High Court has in case of Responsive Industries Ltd. [2019 (26) G.S.T.L. 457 (Bom.)] held as follows:

> *"9. The contention that there was a bona fide belief that the Appellant are not liable to pay the service tax on outward transportation of goods and the GTA is not supported by any reasonable explanation. The bona fide belief that one is not liable to pay the tax has to be based on some facts on record which led to the belief. It is not the Appellant's case that the belief based on a ruling of the some authority that it not liable to pay service tax on outward transportation. A mere statement to the effect that the Appellant was under a bona fide belief of non liability of paying tax cannot be accepted in the face of clear provision of law. Thus, it is not possible to accept the contention that the Appellant had bona fide belief of for non-payment of tax, so as to invoke Section 80 of the Act."*

4.9 *A statement of Shri Sukhdeo Vasudeo Yadav (proprietor of appellant} was recorded on 10-11-2008 wherein he stated that he has paid the service tax but has not filed any service tax return so far and submitted copies of taxable invoices, bank pass book and bank statement for 2006-07; that as a sub-contractor, he has provided commercial & industrial construction service to Gammon India Ltd, Mumbai, Japsin Jacob Wire Drawing P Ltd, New Delhi and Man Infra Project Ltd, Mumbai but has not paid*

any service tax till 31-3-2008 being a sub-contractor; that from 1-4-2008, he started charging service tax on the service provided as sub-contract and that the same would be credited to the service tax department; that he does not have any agreement with these 3 firms but has letter of indent from Gammon India Ltd.

***4.10** Shri Sukhdeo Vasudeo Yadav, in his statement dated 21-11-2008 deposed that he paid service tax for the year 2006-07 but did not pay service tax for 2007-08 and 2008-09(up to October 2008); that in 2006-07, he discharged service tax on the invoices where contract was direct but where contract was on sub-contract basis, he did not discharge service tax; that he was not aware that a sub contractor is liable to pay service tax; that he collected Rs. 1,44,904.00 @12.24% for the period 2007 08 and Rs. 14,49,484.00 @12.36% for the period 2008-09 (till Oct 2008); that he would pay the service tax amount by December 2008 after rechecking his liability and agreed to submit VAT returns and balance sheet on 5-12-2008.*

***4.11** On verification of sample work order bearing number 8450/112 dated 07/04/2007, issued by M/s Gammon India Limited in favor of the appellant, it is observed that as per Clause/ Condition No. 23 of the said contract, "Sub-Contractor has agreed that the service tax is included in his offer and so no claim whatsoever shall not be entertained in this regard & Gammon shall not be liable to pay the same." This condition clearly indicates that contract itself placed service tax liability on the appellant. In contradiction to specific provision of the contract, the submission of the appellant on the basis of the certificate issued by the M/s Gammon India only need to be negated. This condition in contract itself shows that appellant was aware of his liability to pay service tax.*

***4.12** The Appellant concealed the correct taxable amount with the service tax department, until the Departmental*

officers initiated an inquiry in this regard. These facts were suppressed with intent to evade the payment of service tax due on various taxable services provided by them thereby facilitating the evasion of service tax payable on the said services so rendered by them. Thus it the extended period, as provided for under the proviso to sub-section (1) of section 73 ibid for recovery of such service tax not paid and/or short paid by Appellant has been correctly invoked by the revenue authorities.

4.13 *For the facts as stated above when we hold that the ingredients for invocation of the extended period of limitation were present, we are bound to uphold the penalties imposed on the appellant under section 78 of Finance Act, 1994 in view of the decision of Hon'ble Apex Court in case of Rajasthan Spinning Mills [2009 (238) E.L.T. 3 (S.C.)] wherein following has been held:*

> *"20. At this stage, we need to examine the recent decision of this Court in Dharamendra Textile (supra). In almost every case relating to penalty, the decision is referred to on behalf of the Revenue as if it laid down that in every case of non-payment or short payment of duty the penalty clause would automatically get attracted and the authority had no discretion in the matter. One of us (Aftab Alam, J.) was a party to the decision in Dharamendra Textile and we see no reason to understand or read that decision in that manner. In Dharamendra Textile the court framed the issues before it, in paragraph 2 of the decision, as follows :*
>
> *"2. A Division Bench of this Court has referred the controversy involved in these appeals to a larger Bench doubting the correctness of the view expressed in Dilip N. Shroff v. Joint Commissioner of Income Tax, Mumbai & Anr. [2007 (8) SCALE 304]. The question which arises for determination in all*

these appeals is whether Section 11AC of the Central Excise Act, 1944 (in short the "Act') inserted by Finance Act, 1996 with the intention of imposing mandatory penalty on persons who evaded payment of tax should be read to contain mens rea as an essential ingredient and whether there is a scope for levying penalty below the prescribed minimum. Before the Division Bench, stand of the revenue was that said section should be read as penalty for statutory offence and the authority imposing penalty has no discretion in the matter of imposition of penalty and the adjudicating authority in such cases was duty bound to impose penalty equal to the duties so determined. The assessee on the other hand referred to Section 271(1)(c) of the Income-tax Act, 1961 (in short the IT Act') taking the stand that Section 11AC of the Act is identically worded and in a given case it was open to the assessing officer not to impose any penalty. The Division Bench made reference to Rule 96ZQ and Rule 96ZO of the Central Excise Rules, 1944 (in short the "Rules') and a decision of this Court in Chairman, SEBI v. Shriram Mutual Fund & Anr. [2006 (5) SCC 361] and was of the view that the basic scheme for imposition of penalty under section 271(1)(c) of IT Act, Section 11AC of the Act and Rule 96ZQ(5) of the Rules is common. According to the Division Bench the correct position in law was laid down in Chairman, SEBI's case (supra) and not in ***Dilip Shroff's*** *case (supra). Therefore, the matter was referred to a larger Bench."*

After referring to a number of decisions on interpretation and construction of statutory provisions, in paragraphs 26 and 27 of the decision, the court observed and held as follows :

"26. In Union Budget of 1996-97, Section 11AC of the Act was introduced. It has made the position clear that there is no scope for any discretion. In para 136 of the Union Budget reference has been made to the provision stating that the levy of penalty is a mandatory penalty. In the Notes on Clauses also the similar indication has been given.

"27. Above being the position, the plea that the Rules 96ZQ and 96ZO have a concept of discretion inbuilt cannot be sustained. Dilip Shroff's case (supra) was not correctly decided but Chairman, SEBI's case (supra) has analysed the legal position in the correct perspectives. The reference is answered..... ".

21. From the above, we fail to see how the decision in Dharamendra Textile can be said to hold that Section 11AC would apply to every case of non-payment or short payment of duty regardless of the conditions expressly mentioned in the section for its application.

22. There is another very strong reason for holding that Dharamendra Textile could not have interpreted Section 11AC in the manner as suggested because in that case that was not even the stand of the revenue. In paragraph 5 of the decision the court noted the submission made on behalf of the revenue as follows :

"5. Mr. Chandrashekharan, Additional Solicitor General submitted that in Rules 96ZQ and 96ZO there is no reference to any mens rea as in section 11AC where mens rea is prescribed statutorily. This is clear from the extended period of limitation permissible under section 11A of the Act. It is in essence submitted that the penalty is for statutory offence. It is pointed out that the proviso to Section

11A deals with the time for initiation of action. Section 11AC is only a mechanism for computation and the quantum of penalty. It is stated that the consequences of fraud etc. relate to the extended period of limitation and the onus is on the revenue to establish that the extended period of limitation is applicable. Once that hurdle is crossed by the revenue, the assessee is exposed to penalty and the quantum of penalty is fixed. It is pointed out that even if in some statues mens rea is specifically provided for, so is the limit or imposition of penalty, that is the maximum fixed or the quantum has to be between two limits fixed. In the cases at hand, there is no variable and, therefore, no discretion. It is pointed out that prior to insertion of Section 11AC, Rule 173Q was in vogue in which no mens rea was provided for. It only stated "which he knows or has reason to believe". The said clause referred to wilful action. According to learned counsel what was inferentially provided in some respects in Rule 173Q, now stands explicitly provided in Section 11AC. Where the outer limit of penalty is fixed and the statute provides that it should not exceed a particular limit, that itself indicates scope for discretion but that is not the case here."

23. The decision in Dharamendra Textile must, therefore, be understood to mean that though the application of Section 11AC would depend upon the existence or otherwise of the conditions expressly stated in the section, once the section is applicable in a case the concerned authority would have no discretion in quantifying the amount and penalty must be imposed equal to the duty determined under sub-section (2) of Section 11A. That is what Dharamendra Textile decides."

4.14 *As appellant had not taken registration and had not filed ST-3 returns within the prescribed time, penalty imposed under section 77 is justified.*

4.15 *As we uphold the demand for service tax, demand for interest follows, and needs to be upheld. It is now settled law that once the tax is demandable the interest as prescribed by law will automatically follow."*

The decision of Mumbai Bench has been affirmed by Hon'ble Supreme Court as reported at [2023 (6) CEN 210 (Supreme Court)]

4.11 I have earlier observed that in respect of all the amounts received by the appellant as per the 26AS, the TDS was deducted in terms of Section 194C of the Income Tax Act, 1961. Thus I also do not find any merits in the submissions of the appellant that a sum of Rs 90,240/- received by them from NKG Infrastructure was towards refund of security.

4.12 Thus in view of the decisions as above I do not any merits in the submissions made by the appellant either on the merits of demand or on limitation. As I uphold the demand of service tax demand for interest under Section 75 is natural corollary and is upheld.

4.13 I also uphold the penalty imposed upon the appellant under

- Section 78 of the Finance Act, 1994 following the decision of Hon'ble Supreme Court in case of Rajasthan Spinning and Weaving Mills Ltd. [2009 (238) ELT 3 (SC)]
- Penalty under Section 77 (2) of the Finance Act, 1994 by following the decision of the Hon'ble Supreme Court in case of Gujarat Travancore Agency [1989 (42) E.L.T. 350 (S.C.)] relied by Hon'ble Gujarat High Court in case of Synergy Fertichem Pvt. Ltd. [2020 (33) G.S.T.L. 513 (Guj.)] observing as follows:

  "115. The Hon'ble Supreme Court in Gujarat Travancore Agency v. Commissioner of Income Tax,

AIR 1989 SC 1971 = 1989 (42) E.L.T. 350 (S.C.), wherein the Court considered the provision of Section 271(1)(a) of the Income-tax Act and held that the element of mens rea is not involved because the penalty imposed in civil matters is always of a civil nature and it is misnomer to treat such proceedings as quasi-criminal merely because penalty is imposed, and observed as under :-

> *"In most cases of criminal liability, the intention of Legislature is that penalty should serve as a deterrent. The creation of an offence by the statute proceeds with a presumption that society suffers injury by the act or omission of defaulter and that a deterrent sentence must be imposed to discourage the repetition of the offence. In a case of proceedings under Section 271(1)(a). However, it seems that the intention of the legislature is to emphasis the fact of loss of revenue and to provide a remedy for such loss, although, no doubt, an element of coercion is present in the penalty. In this connection, the term in which penalty falls to be measured, is significant. Unless there is something in the nature of statute indication the need to establish the element of mens rea, it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in Section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provisions. …… Accordingly, we hold that the element of mens rea was not required to be proved in the proceedings taken by the Income Tax Officer under Section 271(1)(a) of the Income-tax Act against the assessee."*

116. A Constitution Bench of the Hon'ble Supreme Court in Jain Bros, and Ors. v. The Union of India and Ors., AIR 1970 SC 778, while examining a case of imposing the penalty under the Income-tax Act, held that penalty was merely an additional tax being a civil liability under the Tax Statute, and observed as under :-

> *"Although penalty has been regarded as an additional tax in a certain sense and for certain purpose, it is not possible to hold that penalty proceedings are judicial and essentially a continuation of the proceedings relating to assessment where a return has been filed."*

117. In Commissioner of Income Tax v. Kalyan Das Rastogi, 1993 (Suppl) 1 SCC 663, the Hon'ble Supreme Court placed reliance upon, approved and followed the judgment in Gujarat-Travancore Agency (supra) and reiterated the same view.

118. In Commissioner of Income Tax, Gujarat v. I.M. Patel & Co., 1993 (Suppl) (1) SCC 621, the Hon'ble Supreme Court considered a large number of its earlier judgments, including Gujarat Travancore Agency (supra) and Kalyan Das Rastogi (supra) and categorically held that in a tax liability, the plea of mens rea cannot be taken.

119. In Income Tax Commissioner, Andhra Pradesh, Hyderabad v. Bhikaji Dadabhai & Co, AIR 1961 SC 1265, the Apex Court held that penalty is an additional tax imposed upon a person in view of his dishonesty or contumacious conduct.

120. In Corpus Juris Secundum, 85 580, it has been stated as under :-

> *"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime of a fine or forfeiture provided as*

punishment for the violation of criminal or penal laws."

121. In M/s. Hindustan Steel Ltd. v. The State of Orissa, AIR 1970 SC 253 = 1978 (2) E.L.T. (J159) (S.C.), the Hon'ble Supreme Court considered the provisions of the Orissa Sales Tax Act, 1947, particularly the provisions relating to imposition of penalty imposed for default in registering as a dealer under Section 9(1) read with Section 25(1)(a) of the said Act, and held as under :-

"But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An Order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer

acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

122. Following the aforesaid provisions, while interpreting the provisions of the Madhya Pradesh General Sales Tax Act, 1959, the Hon'ble Supreme Court, in the Cement Marketing Co. of India Ltd. v. The Asstt. Commissioner of Sales Tax, Indora and Ors., AIR 1980 SC 346 = 1980 (6) E.L.T. 295 (S.C.), held that imposition of penalty is penal in character and unless the filing of an inaccurate return is accompanied by a guilty mind, the Section cannot be invoked for imposing penalty. If the contrary view is taken, the result would be that even if the assessee raises a bona fide contention that a particular item is not liable to be included in the taxable turnover, he would have to show it as forming part of the taxable turnover in his return and pay tax upon it on pain of being held liable for penalty in case his contention is ultimately found by the Court to be not acceptable.

123. In Om Prakash Sheo Prakash and Ors. etc. v. Union of India Anr., AIR 1984 SC 1194, the Hon'ble Supreme Court considered the provisions of the Amending Sales Tax Act, made applicable retrospectively imposing the penalty also, and examined its validity on the touch-stone of provisions of Article 19(1)(f) & (g) and Article 21 of the Constitution of India, as Article 20 of the Constitution guarantees the protection in respect of conviction for the offence under any law for the time being in force unless the other conditions provided therein are complied with. The Hon'ble Apex Court considered a large number of its earlier judgments, including the meaning and definition of "penalty" and reached the conclusion that "a penalty imposed by

the Sales Tax Authority is only a civil liability, though penal in nature, and it can be imposed provided the default committed by the dealer is established at an inquiry after giving the dealer concerned an opportunity of being heard. Moreso, the degree of remissness involved in the default is a relevant factor to be taken into account while levying penalty. As the Act provides both the minimum and the maximum amount of penalty leviable and it is corelated to the amount of tax which would have have been avoided if the turnover returned by such dealer had been accepted as correct. The order levying penalty is quasi-judicial in character and involves exercise of judicial discretion.

124. A Constitution Bench of the Hon'ble Supreme Court, in Khemka and Co. (Agencies) Pvt. Ltd. v. State of Maharashtra, AIR 1975 SC 1549, considered the provisions of the Central Sales Tax Act, 1956 in a case of default in payment of tax in respect of Central Act within the prescribed time, and held as under : -

> *"Penalty is not merely sanction. It is not merely adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act."*

125. The Constitution Bench of the Supreme Court in Maqbool Hussain v. State of Bombay, AIR 1953 SC 325 = 1983 (13) E.L.T. 1284 (S.C.), considering the nature of proceedings under the Sea Customs Act and FERA, 1947, dealing with the principle and scope underlying in Article 20(2) of the Constitution of India, held as under : -

> *"The Sea Custom Authorities were not a judicial tribunal and the adjudging of confiscation, increased rate of duty or penalty*

under the provisions of the Sea Customs Act did not constitute a judgment or order of a Court of judicial tribunal necessary for the purpose of supporting a plea of double jeopardy."

126. A Seven Judges Bench of the Hon'ble Supreme Court, in R.S. Joshi etc. v. Ajit Mills Ltd. and Anr. etc., AIR 1977 SC 2279, considered the scope of mens rea while interpreting the provisions of Bombay Sales Tax Act, 1959, and also considered various facets of the expression 'penalty'. The Court observed as under :-

"There was a contention that the expression 'forfeiture' did not denote a penalty. Thus, perhaps, may have to be decided in the specific setting of a statute. But speaking generally, and having in mind the object of Section 37 read with Section 46, we are inclined to the view that forfeiture has a punitive impact. Black's legal Dictionary states that 'to forfeit' is 'to lose, or lose the right to, by some error, fault, offence or crime, 'to incur a penalty.' 'Forfeiture', as judically annotted, is 'a punishment annexed by law to some illegal act or negligence……', something imposed as a punishment for an offence of delinquency. The word, in this sense, is frequently associated with the word "penalty." According to Black's Legal Dictionary, 'the terms 'fine', 'forfeiture' and 'penalty' are often used loosely, and even confusedly, but when a discrimination is made, the word 'penalty' is found to be generic in its character, including both fine and forfeiture. A 'fine' is a pecuniary penalty, and is commonly (perhaps always) to be collected by suit in some form. A 'forfeiture' is a penalty by which

one loses his rights and interest in his property.

……The word 'forfeiture' must bear the same meaning of a penalty for breach of a prohibitory direction. The fact that there is arithmetical identity, assuming it to be so, between the figures of the illegal collections made by the dealers and the amounts forfeited to the State cannot create a conceptual confusion that what is provided is not punishment but a transference of funds. If this view be correct, and we hold so the legislature, by inflicting the forfeiture, does not go outside the crease when it hits out against the dealer and deprives him, by the penalty of the law, of the amount illegally gathered from the customers. The Criminal Procedure Code. Customs and Excise Laws and several other penal statutes in India have used diction, which accepts forfeiture as a kind of penalty. When discussing the relings of this Court we will explore whether this true nature of 'forfeiture' is contradicted by anything we can find in Section 37(1), 46 or 63. Even here we may reject the notion that a penalty or a punishment cannot be cast in the form of an absolute or no fault liability but must be proceeded by mens rea. The classical view that 'no mens rea, no crime' has long ago been eroded and several laws in India, and abroad, especially regarding economic crimes and departmental penalties, have created severe punishments even where the offences have been defined to exclude mens rea. Therefore, the contention that Section 37(1) fastens a heavy liability regardless of fault has no force

in depriving the forfeiture of the character of penalty."

127. In State of Rajasthan v. D.P. Metals, AIR 2001 SC 3076, the Hon'ble Supreme Court considered the validity of the provisions of Section 78(5) of the Rajasthan Sales Tax Act, 1994, which provides for imposing the penalty if the goods being carried in a vehicle are being found without documents required under the Act and the Rules framed thereunder, or the documents are found to be false or forged. The Court held as under :-

"Person Incharge of the goods should have all the requisite documents relating to the title or sale of the goods, which are being transported. Penalty under Section 78(5) is leviable under two circumstances: firstly, if there is non-compliance with Section 78(2)(a). i.e. not earring the documents mentioned in that clause; and secondly, if false or forged documents or declaration is submitted. This Sub-section cannot relate to personal belongings which are not meant for sale but would relate to those types of goods, in respect of which documents referred to in Section 78(2)(a) exist or can exist. Such submission of false or forged documents or declaration at any check post or even thereafter can safely be presumed to have been motivated by desire to mislead the Authorities. Hiding the truth and tender falsehood would per se, so existence of mens rea even if required.

Similarly, where despite opportunity having been granted under Section 78(5), if the requisite documents referred to in Clause (a) of Sub-section (2) are not produced, even

though the same are existing, would clearly prove the guilty intent. It is not possible to agree with the Learned Counsel for respondents that the breach referred to in Section 78(5) can be regarded as technical or venial. Once the ingredients of Section 78(5) are established after giving a hearing and complying with the principles of natural justice, there is no discretion not to levy or levy lesser amount of penalty."

128. In Bengal Iron Merchant Association and Anr. v. Commissioner, Commercial Tax and Anr., (1996) 7 SCC 537, the Hon'ble Supreme Court examined the provisions of Rule 89A(2) of the Bengal Sales Tax Rules, 1941, and held that the said provisions of Rule 89A(2) of the said Rules, 1941 required that any consignment of notified goods shall be accompanied by a declaration by the consignor or his authorised agent in relation to the consignment or to comply with them. The rule squarely placed an obligation upon the consignor/vendor to issue such a declaration and the consignee/purchasers to carry the declaration. The consignees were not entitled to complain that because iron and steel were taxable only at the first point of sale, the sellers (manufacturers) were not issuing the declaration as contemplated by Rule 89A(2) and they were, therefore, not in a position to produce the declaration when demanded by the authorities, in case of failure to produce the said declaration form, they were liable to pay the penalty, as per the said Rules, 1941.

129. In Kishori Lal Rakesh Kumar Mandi v. Commissioner of Sales Tax, 1985 UPTC 211, a Division Bench of the Allahabad High Court, while deciding a reference on interpretation of Section

15A(a)(g) of the Uttar Pradesh Sales Tax Act, 1948, which referred to renewal of registration and for default, whether penalty can be imposed without proving mens rea, expressed the view the mens rea is not necessary for imposing penalty for default covered by Clause (g), observing as under : -

> *"....though mens rea is a necessary ingredient of an offence but the Legislature can free any provision relating to an offence in a statute from this fetter. Clause (g) is free from the bonodage of mens rea."*

130. In Sai Electricals (P) Ltd. v. Commissioner of Sales Tax, 1997 UPTC 721, while dealing with the provisions of Section 4B of the U.P. Trade Tax, 1948, the Allahabad High Court observed that mens rea is not intended by the legislature for imposing the penalty, and held as under :-

> *"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."*

131. In M/s. Rama and Sons, General Merchant, Ballia (supra), the Allahabad High Court, while dealing with the provisions of Section 10A of Central Sales Tax Act, 1956, observed that penalty is leviable if a person being a registered dealer, falsely represents when purchasing any class of goods that goods of such class are covered by his certificate of registration, and held as under : -

> *"The statements made by the dealers were, therefore, untrue but the penalty has been quashed on the ground that there was no mens rea in making the wrong averments in Form C."*

132. The Court further came to the conclusion that the word 'falsification' might have slightly different interpretation if the criminal prosecution was launched, but it was a case of penalty, which was levied to compensate the Revenue and to cause the delinquent to comply with the law; therefore, mens rea was not at all attracted in the case.

133. The Division Bench of the Madras High Court in Vijaya Electricals v. State of Tamil Nadu, 1991 82 STC 268, while interpreting the analogous provisions of Section 10A read with Section 10(b) of the Act, held that mens rea need not be established and if representation is found to be false, it is sufficient to levy the penalty.

134. Similar view was reiterated by the Division Bench of the Madhya Pradesh High Court in Central India Motors v. C.L. Sharma, Assistant Commissioner of Sales Tax, Indore Region, Indore and Anr., 1980 46 STC.

135. In State of Madhya Pradesh v. Narain Singh and Ors., (1983) 3 SCC 596, the Hon'ble Supreme Court considered as case where two trucks carrying fertilizers were intercepted by the Madhya Pradesh Authorities under the Essential Commodities Act and the accused did not deny the transport of fertilizer bags or interception of its lorries or seizure of fertilizer bags and the only defence taken therein was than they were not aware of the contents of the documents seized from them and they were not engaged in exporting the fertilizer bags from Madhya Pradesh to Maharashtra in conscious violation of provisions of the Fertilizer Movement Control Order, 1973 read with Sections 3 and 7 of the Essential Commodities Act, 1955. The Hon'ble Supreme Court, reversing the order of acquittal, held that mens rea was not at all attracted as the provisions of Section

7(1) of the Essential Commodities Act required to be interpreted in true perspective and it provided that if any person contravenes, whether knowingly, intentionally or otherwise any order made under Section 3, he will be punished under the F.M.C.O. The Court held that the element of mens rea in export of fertilizer bags without a valid permit was, therefore, not a necessary ingredient for convicting person for contravention of the order made under Section 3 of the F.M.C.O. if the factum of export or attempt to export is proved by the evidence adduced. This judgment is an authority to show that mens rea may be an essential ingredient in a case of offence for punishing a person, but legislature is competent to provide for punishment including the imprisonment even in a criminal case, excluding the scope or attraction of mens rea.

136. In C.A. Abrahim v. Income Tax Officer, AIR 1961 SC 609, the Apex Court laid down the guidelines in interpreting the provisions of Fiscal Statutes, observing as under :-

> *"In interpreting a fiscal statute, the Court cannot proceed to make good the deficiency, if there be any; the Court must interpret the Statute as it stands and in case of doubt, in a manner favourable to the tax-paper. But whereas in the present case, by use of the words 'capable of comprehensive import, provision is made for imposing liability for penalty upon tax-paper guilty of fraud, gross negligence orm contumacious conduct, a assumption that the words were used in a restricted sense so as to defeat the avade object of the legislature qua and certain clauses will not be lightly met."*

137. Similar view has been reiterated in M/s. Bhikaji Dadabhai & Co. (supra).

138. Similarly, in Commissioner of Sales Tax v. Parson Tools & Plants, AIR 1975 SC 1039, the Apex Court observed as under : -

"Where the legislature clearly declares its intent in the scheme and language of a statute, it is the duty of the Court to give effect to the same without scanning its wisdom or policy, and without engrafting, adding or implying anything which is not congenial to or consistent with such expressed intent of the law-giver; more so if the statute is a taxing statute."

Relevant provisions of Section 22A of the Act reads as under :-

> *"(3) The owner or person in charge of a vehicle, boat or animal shall carry with him a goods vehicle record, trip sheet or a log book, as the case may be, and (such other documents) as may be prescribed in respect of the goods carried in or on the vehicle, boat or animal, as the case may be, and produce the same before any officer in charge of check-post or barrier or any other officer as may be empowered by the Government in that behalf. The owner or person in charge of a vehicle, boat or animal entering the State limits or leaving the State limits shall also give a declaration containing such particulars as may be prescribed of the goods carried in or on the vehicle, boat or animal, as the case may be, before the officer in charge of the check post or barrier or the officer empowered as aforesaid and give one copy of the declaration to such officer, and keep one copy with him.*

(7) (a) The officer incharge of the check post or barrier or any other officer not below the rank of an Assistant Commercial Taxes Officer, empowered in this behalf may, after giving the owner or person incharge of the goods reasonable opportunity of being heard and after holding such further enquiry as he may deem fit, impose on him for possession of goods not covered by goods vehicle record, any other documents prescribed under Sub-section (3) or for submission of false declaration or documents, a penalty equal to five times of the rate of tax notified under Section 5 of the Act, for such goods or 30% of the value of such goods, as may be determined by such officer whichever is less.

Provided that where the goods are being carried without proper documents as required by Sub-section (3) or with any false declaration or statements and the owner or the incharge or the driver of the vehicle, boat or animal carrying such goods is found in collusion for such carrying of goods, the vehicle, boat or animal shall also be seized by the officer empowered under Sub-section (7) and such officer, after affording an opportunity of being heard to such owner, incharge or driver may impose a penalty not exceeding 30% of the value of the goods being carried and shall release the vehicle, boat or animal on the payment of the said penalty, or on furnishing such security in such form as prescribed under Clause (b) of Sub-section (7)……."

139. In Mahaveer Conductors v. Assistant Commercial Taxes Officer, 1997 (104) STC 65, this

Court has interpreted the provisions of Section 22A(7) holding that mens rea was a necessary ingredient, observing as under : -

> *"....Any order imposing penalty for failure to carry out statutory obligation is quasi-criminal in nature. The Statute has not provided any presumption about the existence of mens rea against the defaulter, therefore, as a prosecutor, burden of proving is primarily on the Revenue. The Revenue has failed to discharge its burden inasmuch as it has merely reached a presumption of such deliberate breach……"*

140. Similar view has been reiterated in Assistant Commercial Tax Officer, Flying Squade v. Voltas Ltd., 2000 (120) STC 270. While deciding the said case, reliance has been placed upon the earlier judgments in Mahaveer Conductors (supra) and Hindustan Steel Ltd. (supra).

141. A Division Bench of the Rajasthan High Court in Lalji Moolji Transport Company v. State of Rajasthan, DBCWP No. 324/2002., decided on 10-4-2002, considering the judgments of the Hon'ble Supreme Court in R.S. Joshi and M/s. D.P. Metal (supra) etc., has taken a view that it would not be correct to protect a tax evader saying that there was absence of mens rea. The submission of false of forged document of declaration at the check post or even thereafter, can safely be presumed to have been motivated by desire to mislead the authorities. Thus, it is not always necessary that the doctrine of mens rea is attracted in every fiscal statute in all situations. The Court further held as under :-

> *"The requirement of law is meant to be strictly construed, particularly in areas of evasion of tax. We cannot lose sight of the fact that of the*

there are attempts to avoid statutory obligation or requirement of oblique reason. An undue indulgence and leniency in favour of the tax-evaders on technical or misplaced sympathetic grounds leads to serious consequences affecting the revenue, and as such, development and security of the State. We are not oblivious of the fact that the penalty provisions cannot be used as a revenue-yielding provision. The object to the penalty provision is to ensure compliance in the larger public interest."

142. Finally in the aforesaid context, we may refer to a decision of the Supreme Court in the case of Tamil Nadu Housing Board v. Collector of Central Excise, reported in 1994 Supp. 4 SCR 62 = 1994 (74) E.L.T. 9 (S.C.), wherein the Supreme Court, while dealing with the scope of the proviso to Section 11A of the Central Excises & Salt Act, 1944, observed as under;

"When the law requires an intention to evade payment of duty then it is not mere failure to pay duty. It must be something more. That is, the assessee must be aware that the duty was leviable and it must deliberately avoid paying it. The word 'evade' in the context means defeating the provision of law of paying duty. It is made more stringent by use of the word 'intent'. In other words the assessee must deliberately avoid payment of duty which is payable in accordance with law. In Padmini Products v. Collector of Central Excise, it was held that where there was scope for doubt whether case for duty was made out or not the proviso to Section 11A of the Act would not be attracted. The appellant is a statutory body. It

had taken out licence for concrete as it was being sold to outsiders. No licence was taken out for wood products as according to it it was advised so by the Excise Department itself. It would have been better if the appellant would have examined the officer who was advised not to take licence. But mere non-examination of officer could not give rise to an inference that the appellant was intentionally evading payment of duty. When the appellant was found not to have been making any profit and it had taken out licence for concrete unit then in absence of any other material to prove any deliberate act of the appellant the presumption of reasonable doubt of the appellant cannot be said to have been successfully rebutted. The finding of the Tribunal that there was an intention on the part of the appellant to evade payment of duty, is not based on any material. It was an inference drawn for which there was no basis."

4.14 In view of the discussions as above, I do not find any merits in this appeal.

5.1 Appeal is dismissed.

(Order pronounced in open court on-02 July, 2026)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp