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No Need to file Service Tax return (ST-3) when no service is rendered during the relevant period and even not required to opt for VCES

We are sharing with you an important judgement of the Hon'ble Kolkata Tribunal in the case of **M/s Suchak Marketing Pvt Ltd Vs. Comm. of Service Tax, Kolkata [2013 (6) TMI 641]** and detailed analysis on following issue:

Issue:

Whether Service provider is required to file Service Tax Return when no service is rendered during the relevant period?

Facts of the case:

M/s Suchak Marketing Pvt Ltd ("**the Assessee**" or "**Suchak**") is registered under the taxable service category of constructions in respect of commercial or industrial building and civil structure services under Chapter V of the Finance Act, 1994 ("**the Finance Act**").

During the period April, 2005 to March, 2008 the Assessee has not provided any service and also has not filed Service Tax Return. However the Assessee filed six "Nil" belated Service tax return for the period September, 2005 to March, 2008 on November 18, 2008.

Thereafter the Department issued a show cause notice proposing to impose penalty under Rule 7C of the Service Tax Rules, 1994 ("**the STR**") and Section 77 of the Finance Act. The Adjudicating Authority vide the Order-in-Original ordered the Assessee to pay Rs. 12,000/-for each ST-3 Return under Rule 7C of STR for late filing of Service Tax Return and also imposed penalty of Rs. 2,000/- under Section 77 of the Finance Act.

Subsequently, the Assessee against the Order-in-Original filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) confirmed the late fee of Rs.12, 000/- under Rule 7C of STR and dropped penalty under Section77 of the Finance Act.

Hence the Assessee filed the present appeal before the Hon'ble Tribunal challenging levy of late fee on the ground that it had not provided any services during impugned period and thus was not required to file service tax return.

Held:

The Hon'ble Tribunal waived penalty under Rule 7C of the STR and set aside order of the Commissioner (Appeals) relying on the Central Board of Excise and Customs ("the CBEC") Circular No.97/8/07-ST dated August 23, 2007 and judgment of the Tribunal in the case of Amrapali Barter (P.) Ltd. Vs. CST **[2013-TIOL-32-CESTAT-KOL] ("Amrapali Barter Case").**

The Hon'ble Tribunal observed that even in terms of Rule 7C of the STR in case of filing of NIL returns, the Assessing Officer has discretion to waive late fees for filing of ST-3 returns. Further the Tribunal observed that this is a fit case to invoke proviso to Rule 7C of the STR and waived late fees, relevant proviso of Rule 7C of the STR is as under:

"Provided also that where the gross amount of service tax payable is nil, the Central Excise officer may, on being satisfied that there is sufficient reason for not filing the return, reduce or waive the penalty."

The relevant extract of the Circular and Amrapali Barter Case are as under for the ease of your reference:

The Circular:

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"6. ....Persons who are not liable to pay service tax (because of an exemption including turnover based exemption), are not required to file ST-3 return."

In Amrapali Barter Case, the Service provider is registered with the Service Tax Authorities and has not provided any services during a particular return cycle and was also not liable to pay any service tax during that return cycle. The Hon'ble Tribunal has held that the *service provider is not required to file the Service Tax Return (even nil return) for that period as per the CBEC Circular No 97/8/07-ST dated August 23, 2007.* Further the Hon'ble Tribunal held that in case the Service Provider files the nil return after considerable delay, then also no penalty under Section 77 of Finance Act or fees under Rule 7C of the STR imposable on him. Hence *such case is fit for invocation of the proviso to Rule7C and grant waiver of late filing fees.*

Related open Query in the light of Service Tax Voluntary Compliance Encouragement Scheme, 2013 (VCES):

The TRU (CBEC) has issued a recent Circular No. 170/5 /2013 – ST dated. 08-08-2013 to provide clarification on stated query:

Query: *Whether a person, who has paid service tax for a particular period but failed to file return, can take the benefit of VCES Scheme so as to avoid payment of penalty for non- filing of return?*

Clarification: *Under VCES a declaration can be made only in respect of "tax dues". A case where no tax is pending, but return has not been filed, does not come under the ambit of the Scheme. However, Rule 7C of the Service Tax Rules provides for waiver of penalty in deserving cases where return has not been filed and, in such cases, the assessee may seek relief under Rule 7C.*

Way forward:

Assessee, who has paid service tax for a particular period but failed to file service tax return, can be relieved on following ground:

- Persons who are not liable to pay service tax (because of an exemption including turnover based exemption), are not required to file ST-3 return in terms of ***Circular No.97/8/07-ST dated August 23, 2007 and cited judgement.***

Even if service tax return is filed late/ failed to file return – No Penalty in terms of ***Rule 7C of the STR.***