

Demand, Adjudication and Offences

Question 1

ABC Ltd. had paid, both the service tax and interest for delayed payment before issue of show cause notice under the Finance Act, 1994. Subsequently, the Department initiated penal proceedings against ABC Ltd. for recovery of penalty under section 76 for delayed payment of service tax.

Discuss, with the help of a decided case law, if any, whether the penal proceeding initiated by the Department is justified.

Answer

No, the proceedings initiated by the Department are not justified. The High Court, in case of *CCE & ST v. Adecco Flexione Workforce Solutions Ltd.* 2012 (26) S.T.R 3 (Kar) has held that the Department has no authority to issue a show cause notice when the tax payer has paid service tax along with interest for delayed payments promptly.

The High Court noted that section 73(3) of the Finance Act, 1994 categorically stated that if the payment of service tax and interest has been intimated to the authorities in writing, the authorities should not serve any notice for the amount so paid. The authorities can initiate penal proceedings only against the defaulters who have not paid tax and not against the persons who have paid tax with interest on their own. The High Court observed that if the notices are issued contrary to this section, the person who has issued notice should be punishable and not the person to whom it has been issued.

Question 2

Naveen Constructions was a construction company rendering services under the category of "construction of residential complex service" and was paying the service tax in accordance with the Finance Act, 1994. They undertook certain construction work on behalf of a trust and paid the service tax. However, later they filed refund claim for the service tax so paid contending that they were not actually liable to pay service tax as it was exempt.

Although Department did not dispute the fact that service tax was exempted in the instant case, it nevertheless rejected the refund claim on the ground that the refund application filed by the assessee was beyond the limitation period as stated in section 11B of the Central Excise Act, 1944.

Is the Department correct in rejecting the refund claim? Substantiate your answer with the help of a decided case law, if any.

Answer

No, the Department is not justified in rejecting the refund claim.

The facts of the given case are similar to the case of *CCE (A) v. KVR Construction 2012 (26) STR 195 (Kar.)* wherein the High Court noted that service tax paid mistakenly under construction service although actually exempt, was payment made without authority of law. Mere payment of amount would not make it 'service tax payable by the assessee'. The High Court opined that once there was lack of authority to collect such service tax from the assessee, it would not give authority to the Department to retain such amount and validate it.

Further, provisions of section 11B of the Central Excise Act, 1944 apply only to a claim of refund of excise duty/service tax, and could not be extended to any other amounts collected without authority of law.

In view of the above, the High Court held that refund of an amount mistakenly paid as service tax could not be rejected on ground of limitation under section 11B of the Central Excise Act, 1944.

Question 3

Mohan fails to pay service tax of ₹ 15 lakh payable on 5th January, 2014. He pays it on 16th January, 2014. Determine the penalty under section 76 payable by Mohan in this case.

Answer

Amount of service tax which Mohan failed to deposit = ₹15,00,000

Due date of depositing service tax is 05.01.2014

Date on which service tax actually deposited is 16.01.2014

No. of days by which service tax was deposited late = 11 days [16th Jan. – 5th Jan.]

(Penalty under section 76 is computed for a period beginning with the first day after the due date and ending with the date of actual payment.)

Computation of quantum of penalty

Mohan is liable to pay penalty for delayed payment of service tax under section 76 as follows:-

(A) ₹ 100/- per day for every day during which such default continues

= ₹100/- per day for 11 days = ₹100 × 11 days = ₹1,100

or

(B) 1% per cent of amount of default, per month

= ₹15,00,000 × 1% × $\frac{11}{31}$ = ₹5,323

whichever is higher.

7.3 Service Tax

However, total amount of penalty payable under this section shall not exceed 50% of the service tax that the assessee has failed to pay i.e.:-

₹5,323 or ₹ 7,50,000 [50% of ₹15,00,000], whichever is lower.

The amount of penalty payable by Mohan is ₹5,323/-.

Question 4

PQR Ltd. was required to deposit service tax of ₹ 10,000/- by 5th May, 2011. It actually deposited it on 5th June, 2014. Compute the amount of penalty payable by PQR Ltd. under section 76 of the Finance Act, 1994.

Answer

Amount of service tax PQR Ltd. failed to deposit = ₹10,000

Due date of depositing service tax is 05.05.2011

Date on which service tax actually deposited is 05.06.2014

No. of days by which service tax was deposited late = 1127 days

Computation of quantum of penalty

Higher of the following two amounts:-

(A) ₹100/- per day for 1127 days = ₹100 × 1127 days = ₹1,12,700;

OR

(B) 1% of the amount of default for 1127 days is computed as follows:-

Year	Number of months	Amount (₹)
<u>2011</u>		
May	$\frac{26}{31}$	$10,000 \times 1\% \times \frac{26}{31} = 83.87$
June -December	7	$10,000 \times 1\% \times 7 = 700$
2012	12	$10,000 \times 1\% \times 12 = 1,200$
2013	12	$10,000 \times 1\% \times 12 = 1,200$
<u>2014</u>		
January-May	5	$10,000 \times 1\% \times 5 = 500$
June	$\frac{5}{30}$	$10,000 \times 1\% \times \frac{5}{30} = 16.67$
Total amount		3,701

Amount higher of (A) and (B) is ₹1,12,700

However, the amount of penalty is to be restricted to 50% of amount of service tax payable i.e. ₹1,12,700 or ₹ 5,000 [50% of ₹10,000], whichever is lower.

The amount of penalty payable by PQR Ltd. is ₹ 5,000/-.

Question 5

A Ltd. starts an advertising agency on April 1, 2013. The details of the bills raised by it during April to June, 2013 are given as under:

Bill No.	Date	Value of taxable services (₹)
1.	05.04.2013	82,500
2.	11.04.2013	95,000
3.	18.04.2013	1,65,000
4.	28.04.2013	95,000
5.	13.05.2013	2,75,000
6.	15.05.2013	1,68,000
7.	30.05.2013	1,07,000
8.	01.06.2013	82,500
9.	17.06.2013	89,500
10.	25.06.2013	47,600

A Ltd. applies for registration on 22.08.2013. Is A Ltd. at any default? If yes, what are the penal consequences?

Answer

Since A Ltd. has started its business in the year 2013-14, it would be entitled for small service providers exemption available under *Notification No. 33/2012 ST dated 20.06.2012*. Thus, A Ltd. will be exempt from paying service tax on the taxable services of aggregate value up to ₹10 lakh.

However, section 69 of the Finance Act, 1994 read with the Service Tax (Registration of Special Category of Persons) Rules, 2005 provides that a provider of taxable service whose aggregate value of taxable services in a financial year exceeds ₹ 9,00,000 has to make an application for registration within a period of 30 days of exceeding the aggregate value of taxable service of ₹ 9,00,000.

The aggregate value of taxable services of A Ltd. exceeds ₹ 9,00,000 on 30.05.2013 when it issues Bill No. 7 of ₹ 1,07,000. Thus, A Ltd. should apply for registration on or before

7.5 Service Tax

29.06.2013. However, the application for registration is made on 22.08.2013. Thus, there is delay of total 54 days.

A Ltd. will, therefore, be liable to a penalty which may extend upto ₹10,000.

Question 6

Discuss the prosecution, arrest and bail implications, if any, in respect of the following cases pertaining to June, 2013:

- (i) 'A' avails CENVAT credit of ₹ 52 lakh without actual receipt of excisable goods. However, he is yet to utilize the same.
- (ii) 'B' willfully evades payment of service tax of ₹55 lakh.
- (iii) 'C' knowingly supplies false information sought by the Central Excise Officer. The amount of service tax involved is ₹10 lakh.
- (iv) 'D' collects ₹ 65 lakh as service tax from its clients but deposits only ₹ 5 lakh with the Central Government.
- (v) 'E' collects ₹ 55 lakh as service tax from its clients and deposits ₹ 51 lakh with the Central Government.

In the above question, what will be the prosecution implications, if B, D and E are convicted for subsequent offences?

Answer

Person	Offence	Prosecution	Arrest	Bail
'A'	No offence as both availment <u>and</u> utilization of credit without actual receipt of excisable goods constitutes an offence [Section 89(1)(b)]	NA	NA	NA
'B'	Non-cognizable offence [Section 90(2)]	6 months to 3 years [Section 89(1)(i)]	Arrest can be ordered by Commissioner of Central Excise [Section 91(1)]	Bailable Offence [Section 90(2)]
'C'	Non-cognizable offence [Section 90(2)]	Upto 1 year [Section 89(1)(iii)]	No arrest [Section 91(1)]	Bailable Offence [Section 90(2)]
'D'	Cognizable offence [Section 90(1)]	6 months to 7 years [Section	Arrest can be ordered by	Non-Bailable/Bail

		89(1)(ii)]	Commissioner of Central Excise without arrest warrant [Section 91(2)]	able Offence [Section 90(2)]
'E'	Non-cognizable offence [Section 90(2)]	Upto 1 year [Section 89(1)(iii)]	No arrest [Section 91(1)]	Bailable Offence [Section 90(2)]

Prosecution implications if B, D and E are convicted for subsequent offences are as follows:-

Person	Prosecution for subsequent offences
'B'	Imprisonment upto 3 years [Section 89(2)(a)]
'D'	Imprisonment upto 7 years [Section 89(2)(b)]
'E'	Imprisonment upto 3 years [Section 89(2)(a)]

Question 7

Discuss the prosecution, arrest and bail implications, if any, in respect of the following cases:

- Mr. Mihir provides consulting engineer's services of ₹ 60 lakh during the month of July, 2013 and knowingly evades the payment of service tax.
- Mr. Sanjay avails and utilizes credit of service tax of ₹ 45 lakh during the quarter ending September, 2013 without actual receipt of taxable service.
- Mr. Ramesh fails to supply any information [with service tax implications of ₹ 52 lakh] which he was required to supply under the Service Tax Rules, 1994.
- Miss Kanika collected service tax of ₹ 70 lakh in the month of June, 2013 but did not deposit the said amount until 31st March, 2014. She has committed such offence for the second time.

Answer

Person	Offence	Prosecution	Arrest	Bail
Mr Mihir	Non-cognizable offence	6 months to 3 years	Arrest can be ordered by Commissioner of Central Excise	Bailable Offence
Mr. Sanjay	Non-cognizable offence	Upto 1 year	No arrest	Bailable Offence
Mr. Ramesh	Non-cognizable offence	6 months to 3 years	Arrest can be ordered by Commissioner of Central Excise	Bailable Offence

7.7 Service Tax

Miss Kanika	Cognizable offence	Upto 7 years	Arrest can be ordered by Commissioner of Central Excise without arrest warrant	Non-Bailable/Bailable Offence
-------------	--------------------	--------------	--	-------------------------------

Question 8

MNL Ltd. did not pay its service tax dues of ₹ 40 lakh for the period ending 30.09.2013. Can the Department create first charge on the property of MNL Ltd.? If your answer is affirmative, whether there are any limitations in respect of creation of such first charge?

Answer

According to provisions of section 88 of the Finance Act, 1994, any amount of tax, penalty, interest or any other sum payable by an assessee or any other person shall be the first charge on the property of the assessee or the person, as the case may be. Thus, the Department can create first charge on the property of MNL Ltd for recovery of service tax dues of ₹ 40 lakh.

However, the aforementioned first charge can be created subject to the provisions of following specified Acts:-

- Companies Act, 1956 (Section 529A);
- Recovery of Debt due to Bank and Financial Institution Act, 1993; and
- Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, 2002.

Exercise

1. *Write a short note on provisional attachment to protect revenue in certain cases under section 73C.*
2. *What are the various modes of recovery of any amount due to Central Government?*
3. *During the month of January, 2014, ABC Ltd. evaded the service tax of ₹ 1,00,00,000. Ram was the director of ABC Ltd during said period and was responsible for the conduct of the company till March, 2014, after which he resigned. The Department issued a show cause notice to the company demanding the service tax, interest and penalty thereon for the period in default. Besides, it issued a separate show cause notice to Ram levying a personal penalty of ₹ 75,000 on him. He contended that he cannot be held personally liable for the contravention committed by the company from which he had already resigned. Examine whether the contention raised by Ram is valid in law.*