

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL Nos. ST/53721-53723/2014-CU[DB]

(Arising out of Order-in-Original No.57/Commr./Noida/2013-14 dated 17/02/2014 passed by Commissioner, Customs, Central Excise & Service Tax, Noida)

M/s Logix Soft-Tel Pvt. Ltd.,
(In Appeal No. E/53721/2014)

M/s IT Enfraservices Pvt. Ltd. &
(In Appeal No. E/53722/2014)

M/s Akshay Vanijya & Finance Pvt. Ltd.
(In Appeal No. E/53723/2014)

Appellants

Vs.

Commissioner of Central Excise, Noida

Respondents

Appearance:

Shri Abhinav Kalra (C.A.)
Shri Rajeev Ranjan (Addl. Commr.) AR

for Appellant
for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 17/07/2018
Date of Decision : 17/07/2018

FINAL ORDER NOS. - **71576-71578/2018**

Per: Archana Wadhwa

All the three appeals are being disposed of by a common order as they arise out of the same impugned order passed by the Commissioner and the issue involved is identical in all the three appeals.

2. After hearing both the sides, duly represented by Shri Abhinav Kalra Chartered Accountant and Shri Rajeev Ranjan Additional Commissioner, we find that the appellants were providing services from different locations which included two different types; one related to renting of the premises as unit floor renting and said service was being considered by them as falling under 'Business Support Services' and service tax was being paid by them accordingly. The second part of the services being provided by them related to the providing of furniture and other infrastructure facilities included Wi-Fi facilities etc. No service tax liability was being discharged by them on the said activity.

3. With effect from 01/06/2007, a separate category of service designated i.e. "Renting of Immovable Property" was introduced in the statute. Accordingly, with effect from said date appellant started discharging their service tax liability on both activities under the category of 'Renting of Immovable Property', without any objection from the Revenue. This continued for a period of around four years till present show cause notice was issued to them.

4. Subsequently show cause notice was issued to the appellant on 13/10/2011 alleging that prior to 01/06/2007 that is for the period 01/05/2006 to 30/05/2007, providing of furniture along with infrastructure facilities etc. were falling under the category of 'Business Support Services' and the appellants should have discharged their service tax liability for the said period, under the said category. The said show cause notice which raised the demands against the three appellants for the same period, culminated into an order passed by the Commissioner vide which he confirmed the demands against all the three appellants along with confirmation of interest and imposition of penalties. The said order of the Commissioner is impugned before us.

5. Learned advocate has assailed the impugned order on merits as also on limitation. We are of the view that inasmuch as the demand stand raised by invoking longer period of limitation, the appeals can be disposed of on the said issue.

6. On going through the show cause notice, we note that there is no dispute about the factual position that all the three appellants starting discharging their service tax

liability under the category of “Renting of Immovable Property”, with effect from 01/06/2007, after getting themselves registered with the department. No objection was ever raised by the Revenue at the time of registration or at any time thereafter. The relevant paragraph from the show cause notice admitting the said position is reproduced below:-

“Renting of Immovable Property” was brought within the ambit of service tax w.e.f. 01/06/2007. Thereafter, these aforesaid three group companies of Logix group viz. “M/s ITPEL,” “M/s LSTPL” and “M/s AVFPL” started to pay service tax under the head of ‘Renting of Immovable Property’ w.e.f. 01/06/2007, whereas it appears essential features of infrastructure support service were present in the services provided by these three companies of M/s Logix Group and it thus appears that they should have paid service tax under the category of ‘Business Support Service’ w.e.f. 01/05/2006 in respect of all the infrastructural services provided by them on chargeable basis including the services provided by them to STP units for providing “plug and play” facilities in their business centres.”

7. The Commissioner while adjudicating the show cause notice have not accepted the assessee's plea on limitation by observing as under:-

“As discussed above the party failed in discharging their statutory liabilities. They failed to deposit the due tax in time prescribed under the Finance Act, 1994. They failed to file prescribed Service Tax Returns properly. Bona fide on their part is not acceptable as they never contacted the department or sought any clarification on the issue of taxability or otherwise from the department. Rather they misled the department by providing covert information of gross value charged for ‘Infrastructural Support Services’ services in their periodical ST-3 Returns. Thus, it is established that there is short payment of service tax on account of suppression of facts and therefore penalty as provided under Section 78 is imposable. It is more so as they contravened the provisions of service tax law, suppressed this vital information with intent to evade payment of tax. It was not mere failure or omission on their part; rather act on of part of party is deliberate, resulted in loss to the exchequer. All this has clearly leads that the suppression and contravention of provisions is with

deliberate intent not to pay service tax on gross amount for services charged from consumer of ‘Infrastructural Support Services’ or in harsher words to evade payment of Service Tax. Hence, I find that for intentional short payment/non-payment of service tax they are liable to penal action under Section 78 of Finance Act, 1994 as proposed in notice to show cause.”

8. As is seen from the above, the Adjudicating Authority has justified invocation of extended period by observing that the appellants, during the relevant period, were filing the ST-3 returns by reflecting the gross value, which amounts to suppression of facts. He has further observed that the appellants suppressed the vital information with intent to evade payment of tax, which is not a mere failure or omission on their part.

However, we find no force in the above observation of the Adjudicating Authority. It is admitted fact on record that prior to 01/06/2007, the appellant was discharging service tax liability in respect of one activity i.e. renting of the floor area on unit basis. Thereafter they got themselves registered for all the services under the category of “Renting of Immovable Property” and started

paying service tax on the consideration received by them from their customer on account of the said activity of providing furniture & infrastructure activities. The said fact is clear from the above reproduced portion from the show cause notice. If that be so, we really fail to understand as to how any suppression can be attributed to the assessee so as to justifiably invoke the longer period of limitation. The value of both the activities was being reflected in their ST-3 returns from the period 01/06/2007 onwards and the service tax was being paid accordingly. This fact leads to the inevitable conclusion that the Revenue was aware of the activities of the assessee, at least from 01/06/2007 onwards. Even then the show cause notice stand issued in October, 2011, with allegation of suppression and mis-statement on the assessee. In fact, we are of the view that it is failure of the Revenue itself which they are trying to cover by attributing *mala fide* to the assessee.

As per the settled law, extended period is invocable only when there are positive evidences of any suppression or mis-statement, with intent to evade payment of duty. In the absence of the same, the demands raised beyond the normal period are liable to be stuck down as barred by limitation. Inasmuch as the

entire facts were known to the Revenue, we find no justification for invoking the extended period and inasmuch as the entire demand is beyond the normal period of limitation, we are of the view that impugned order is liable to be set aside on the said ground itself. We order accordingly, and allow all the three appeals with consequential relief to the appellants.

(Dictated & Pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks