

**THE HIGH COURT OF JUDICATURE FOR THE STATE OF
TELANGANA : HYDERABAD**

CEA NO.2 OF 2021

The Commissioner, Customs & Central Excise,
Hyderabad IV (presently Commissioner, Central Tax & Central
Excise and Service Tax, Medchal Commissionerate), Medchal GST
Bhavan, 11-4-649/B, Lakdikapool, Hyderabad.

.. Appellant

Vs.

M/s. National Remote Sensing Agency, Balanagar Hyderabad.

.. Respondent

DATE OF THE JUDGMENT PRONOUNCED: 14.06.2021

SUBMITTED FOR APPROVAL:

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE T.VINOD KUMAR**

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|----|--|--------|
| 1. | Whether Reporters of Local newspapers
may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be
marked to Law Reporters/Journals | Yes/No |
| 3. | Whether Their Lordships wish to
see the fair copy of the judgment? | Yes/No |

M.S.RAMACHANDRA RAO, J

T.VINOD KUMAR, J

*** HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE T.VINOD KUMAR**

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% DATED 14th JUNE, 2021

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<Gist:

>Head Note:

! Counsel for the Appellant: Sri B. Narayan Reddy,
Learned Senior Standing Counsel appearing
for the appellant-Revenue

^Counsel for Respondent: ---

? CASES REFERRED:

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

AND

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

CEA No.2 of 2021

ORDER : *(per Hon'ble Sri Justice T. Vinod Kumar)*

This appeal under Section 35H of the Central Excise Act, 1944 (as applicable to the Finance Act, 1994), is directed against the common order No.A/30898-30899/2020 dated 29.06.2020 in Service Tax Appeal Nos.401 of 2008 and 402 of 2008 passed by the Customs, Excise and Service Tax Appellate Tribunal, Regional Bench, Hyderabad (for short 'the Tribunal').

2. The Revenue is the appellant before this court.

3. Before the Tribunal, there were two appeals, one filed by the respondent / assessee numbered as S.T. No. 401 of 2008 and the other by the appellant / Revenue numbered as S.T. No. 402 of 2008.

4. By the present appeal, the Revenue is questioning the order passed by the Tribunal in appeal numbered as S.T. No. 401 of 2008, filed by the respondent / assessee, to the extent it held that (a) the respondent / assessee had not resorted to willful suppression with an intent to evade payment of service tax and thus the extended period of limitation prescribed under Section 73(1) of the Finance Act cannot be invoked and (b) since, there is no evidence of willful suppression of facts, provisions of Section 80 of Finance Act, 1994 can be invoked to waive the penalties imposed.

5. The Respondent / assessee – National Remote Sensing Agency (for short “NRSA”) is an autonomous body under the Department of Space and Research. The respondent is an organization established with the object of capturing Satellite Data Reception, Processing, Dissemination and application of Satellite Data in harnessing natural resources and also supporting various agencies of Government which are involved in launching of Satellite like ISRO and other Space centres concerned with designing of Satellite launch vehicles by receiving data from the Satellites launch, processing and disseminating the same to the user agency including Defence establishments on behalf of the Government of India.

6. It is on record that authorities of Revenue directed the respondent NRSA to obtain registration in respect of the three services viz., (1) photography service, (2) scientific and technical consultancy service and (3) commercial training and coaching service, as these services are taxable services under Chapter V of the Finance Act, 1994, and NRSA is providing above services for consideration and is required to discharge service tax. Upon such direction of the authorities of the Revenue, NRSA obtained registration under the provisions of Finance Act, 1994, with effect from 14.02.2005.

7. On the respondent-NRSA obtaining registration as guided by the appellant-Revenue authorities, the respondent was issued notices calling for certain records and documents for the period 16.07.2001 to 31.03.2005 in respect of above three categories of services for which registration was obtained.

8. In response to the notice issued by the appellant, the respondent submitted Annual Reports for the year 2001 to 2004-2005, detailed project-wise list, the working of the respondent with regard to Satellite Data dissemination and other activities undertaken for user agencies.

9. Upon the submission of the above information, the appellant-Revenue issued show cause notice dt. 23.10.2006 in O.R. No.84/2006-Adjn (ST), calling upon the respondent-NRSA to - show cause as to why service tax of Rs.19,89,66,570/- should not be demanded and recovered on the photography service, scientific and technical consultancy service and commercial training and coaching service from it, for the period 16.07.2001 to 31.03.2005 and on advances received during the period of 16.06.2005 to 31.12.2005 under Section 73(1)(a) of the Finance Act, 1994 read with Section 68 of the said Act and Rule 6 of Service Tax Rules, 1994, along with Education Cess leviable thereon under Section 91 read with Section 95 of the Finance Act, 2004. In addition to demand of service tax, the respondent was also directed to show cause as to why penalty should not be imposed on them under Sections 76, 77 and 78 of the Finance Act, 1994.

10. The respondent had submitted its reply dt. 02.02.2007 *inter alia* contending that the respondent is not providing photography services as defined under sub-clause (zb) of Section 65(105) of the Act; that the respondent cannot be considered as photography studio or agency in as much as it is not in the profession of rendering service in relation to photography as defined under clause (64) of Section 65 of the Finance Act. Similarly, with regard to the other activities undertaken by the

respondent which are sought to be classified under the category of scientific or technical consultancy services, it was contended that the activity of collection of data processing and supplying the same to various user agencies of the Government relating to Geological, Geophysical, Prospecting surface, sub-surface or Aerial surveying or mapping of the earth, cannot be considered as providing advice, technical consultancy or assistance service. On the other hand, it is contended that the activity undertaken by the respondent-NRSA is in the nature of survey and map making.

11. It also contended that various projects or jobs which are entrusted to it by various departments of Central and State Governments involve survey and map making which information provided by the respondent is further processed and used by the said Government agencies; that the scope of the work under various job orders given is composite in nature with the primary object of the survey, map making of the earth surface or sub-surface, Reception, Processing, Dissemination and application of Satellite Data and the same cannot be vivisected to apply different category of services as defined under the Finance Act, 1994; that, since all its customers are departments of Central Government or State Government or its undertakings, they do not have any intention not to pay service tax, if due thereon nor there is any intention on its part to evade the same; and that being a Government department, it did not resort to suppression with an intent to evade payment of service tax and, as such, the extended period of five years cannot be invoked in this case for demanding the service tax for the period 16.07.2001 to 31.03.2005 and on advances received during the period 16.06.2005 to 31.12.2005.

12. The respondent further claimed that it received certain grants from Department of Space for upgradation of its facilities for carrying out research projects like remote sensing application machine, integrated machine for sustainable development and large scale mapping of the country provided to ISRO for development of payload for future Satellites; identification of earthquake affected area, carrying out aerial photography over the flood affected area and fertilizer requirement using remote sensing. Thus, it is contended that there is no service to third party as these are in-house projects for the same department under which they are working.

13. The above said submissions of the respondent did not find favour with the Commissioner viz., appellant-Revenue, who by his order dt. 27.03.2008 in Order-in-Original (Service Tax) No.05/2008 confirmed the proposals made in the show cause notice in relation to demand of service tax under the category of photography services and scientific and technical consultancy services rendered, including penalties and interest, while accepting the contention of the respondent-NRSA in relation to non-liability to service tax on consideration received as grant for in-house project.

14. Being aggrieved by the said Order-in-Original, both the Revenue as well as the respondent-NRSA preferred separate appeals before Tribunal. The Revenue preferred appeal STA. No.402 of 2008 to the extent the respondent was granted benefit of exemption from levy of service tax on the grant received for in-house project. The respondent-NRSA filed appeal being STA. No.401 of 2008 disputing its liability to service tax under the category of photography services and scientific or technical

consultancy services during the period in dispute; invocation of extended period of limitation; and imposition of penalties. Both the appeals filed by the appellant and the respondent-NRSA were taken up for hearing together and disposed of by the Tribunal by its common order dt. 24.06.2020.

15. The Tribunal, by its common order dt. 24.06.2020, held that- the respondent is liable to pay service tax under the category of photography services and scientific or technical consultancy services; that having regard to the fact that the respondent-NRSA is a Governmental organization run by Bureaucrats and Scientists, none of whom have any personal interest in evading service tax, it cannot be concluded that the respondent had committed fraud or collusion or willful misstatement or suppression of facts with an intent to payment of evade service of tax. Thus, the Tribunal held that the extended period of limitation cannot be invoked and demand for the normal period of limitation would only survive. In so far as imposition of penalty under Section 78 of the Finance Act, 1994, the Tribunal also held that there is no evidence of willful suppression of facts with an intent to evade payment of service tax, and it is a fit case to invoke Section 80 of the Finance Act to waive penalties imposed under Section 78 of the Act.

16. Aggrieved by the said order passed by the Tribunal in holding that the extended period of limitation is not invocable and also waiving the penalties, the Revenue has filed the present appeal.

17. According to the appellant-Revenue, the Tribunal ought not to have interfered with the Order- in-Original, since the respondent

did not comply with the statutory tax provision; but for the intervention of the department, the respondent did not come forward for paying service tax; thus, there was suppression of material facts, a pre-condition for invoking the extended period of limitation under Section 73(1) of the Finance Act. Similarly, it is also contended that the Tribunal ought not to have invoked the provisions of Section 80 of the Act *suo motu* to waive all the penalties imposed without existence of a reasonable cause for failure to pay service tax.

18. Heard Sri. B. Narayan Reddy, Learned Senior Standing Counsel appearing for the appellant-Revenue. On behalf of appellant –Revenue, written arguments are also filed.

19. As seen from the Order-in-Original, as well as the order of the Tribunal, the main contention of the respondent-NRSA was that the nature of activity carried on by it is, primarily is of survey and map making as defined under sub-clause (zzzc) of Section 65(105) of the Finance Act; that in the course of execution/performing the above said nature of composite activity, capturing images and the geographic information in the fields of agriculture, forestry, geology, oceanography and water resources and the data acquired and processed and disseminated to the user agencies of both in Central and State governments cannot be vivisected to fall under different category services as enumerated under the Finance Act, 1994; and that, since the said activity of survey and map making undertaken by the respondent being an agency under the control or authorized by the Government, not being considered as a service, the same would not be liable to tax.

20. As an alternative, the respondent also contended as to how each of the category of service under which the service tax is sought to be demanded from it, would not be applicable.

21. From a reading of the impugned order, it is to be seen that the Tribunal, had taken note of the primary contention urged by the respondent-NRSA, that the activity carried on by the respondent would be classifiable as a service covered by Section 65(104)(b) being a taxable service as defined under Section 65(105)(zzzc) of the Finance Act, 1994, liable to service tax, if at all, only w.e.f 16.06.2005 and no service tax can be demanded by classifying the activity under the heads of i) photography service, and ii) scientific and technical consultancy service. However, there is neither a discussion nor a finding recorded by the Tribunal on the primary contention raised by the respondent-NRSA. On the other hand, the Tribunal proceeded to consider as to whether the demand of service tax under the heads of photography service, scientific and technical service can be sustained and also as to invocation of extended period of limitation and imposition of penalty.

22. Having said so, the only issue which this Court is now required to consider is as to whether the respondent-NRSA had any intent to evade service tax on its activities during the period 16.07.2001 to 31.03.2005 and on advances received during the period 16.06.2005 to 31.12.2005, justifying the action of the appellant-Revenue invoking the extended period of limitation for demanding of service tax, as contended. From the Order-in-Original, it is evident that the respondent had applied and obtained registration under various categories of services as guided

by the authorities of the appellant-Revenue. It is also evident that the authorities, who informed the respondent that its activities would get covered by photography service, scientific or technical constancy service and commercial training and coaching service etc., are guided by Revenue considerations alone and they have not kept in mind the nature of activity undertaken by the respondent-NRSA and area of operation of its activities, apart from the important role it plays in the affairs of this nation.

23. The appellant-Revenue authorities initially directed the respondent-NRSA to obtain registration under the above three categories which was duly adhered to by obtaining registration on 14.02.2005. Upon obtaining registration, the appellant-Revenue saddled the respondent-NRSA with the show cause notice for the period prior to registration by invoking the provisions of Section 73(1)(a) of the Finance Act. To justify the action of invocation of extended period of limitation, it has been stated that since, the respondent has been rendering taxable service and failed to observe statutory provisions for registration and payment of service tax, there was suppression of material facts.

24. The Tribunal while considering the above said aspect had observed as under:

“we find that the assessee in this case is an autonomous organization under the Department of Space, Government of India. It is not a private business entity.”

“By not paying service tax the assessee is not gaining anything. It is a Governmental organization run by Bureaucrats and Scientists, none of whom have any personal interest in evading service tax. In fact, by evading service tax, nothing would be gained either by anyone individually or by

their organization. Revenues argument is that the assessee had not come forward to disclose all their activities and therefore they have suppressed the facts, which is sufficient to invoke extended period of limitation. We do not agree with this contention. The assessee could have genuinely believed that they were not liable to pay service tax and not disclosed facts to the department or sought any advice or guidance from the department regarding taxability of their services. In this factual matrix, by no stretch of imagination can we hold that the assessee has committed fraud or collusion or willful misstatement or suppression of facts can intend to evade payment of service tax”.

25. By observing as above, the Tribunal held that the extended period of limitation cannot be invoked in this case and the demand if any, can only be survived within the normal period of limitation.

26. The finding as recorded by the Tribunal, in our view, is justified, for the reason that, though the respondent is established as an autonomous body, the same for all purposes like administrative control, its financial needs etc., looks only to the Government. This is on account of the fact the services of the respondent are utilized for functioning of various Government agencies under different Ministries and is not run like a private commercial organization with a profit motive.

27. Thus, there is no incentive for the respondent-NRSA to resort to evasion of tax which could result either in the profits soaring higher or any individual being benefited. On the other hand if there existed a liability, the respondent could have factored the same in its budget proposals and sought for release of more funds from the Government to discharge its liability. Thus, it is only flow of funds from one pocket to the other pocket of the Government

and would not result in any gain either to the organization or to any individual. In this view of the matter, it is absurd to even suggest that the respondent had suppressed facts with an intent to evade payment of tax, and mulct it with payment of service tax by invoking the extended period of limitation.

28. It also needs to be noted that organizations like respondent-NRSA are run by Scientists, Academicians and Administrators. Even if there has been any non payment of service tax, the same cannot be alleged to be by fraud, collusion or willful misstatement or suppression of facts. Attributing fraud, collusion, suppression or willful mis-statement to the Scientists and Academicians, will have a demoralizing effect, would not be in public interest. On the contrary, it could contribute to Brain drain from the country.

29. The focus of the organizations like the respondent-NRSA is definitely not on either resorting to tax evasion or tax planning which would benefit the establishment, but is focused in its core activity of research and assisting the other agencies of Government in various projects. The said fact was completely lost sight by the appellant-Revenue while passing the Order-in-Original, which however, has been rightly taken note by the Tribunal.

30. This court also records its displeasure in the manner in which the approval was accorded by the authority for filing this appeal, without due consideration of the fact that the activity of the respondent-NRSA involves Nations Safety and Security and that it is not a private commercial concern.

31. Thus, this court is of the view that in the given facts and circumstances, the Tribunal has given cogent reasons for holding that the extended period of limitation under Section 73(1)(a) of Finance Act, 1994 would not be invocable.

32. Similarly, the order of the Tribunal waiving all penalties by invoking Section 80 of the Finance Act, is also rightly justified.

33. In view of the above, this Court is of the opinion, no substantial question of law arises for consideration in this appeal.

34. Accordingly, the appeal of the Revenue is dismissed at the stage of admission with Costs. The appellants shall pay costs of Rs. 10,000/- to Telangana High Court Legal Services Committee within six weeks.

35. The miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

T. VINOD KUMAR, J

Date:14.06.2021

Note: L.R. copy to be marked.

B/o
MRKR

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T. VINOD KUMAR

CEA No.2 of 2021

(Division Bench Judgment prepared by Hon'ble Sri Justice T. Vinod Kumar)

14.06.2021