# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
## CHANDIGARH

REGIONAL BENCH - COURT NO. I

**Service Tax Appeal No. 60295 of 2023**

[Arising out of Order-in-Original No. 07/GST-GGM/COMMR/PRL/2022-23 dated 23.02.2023 passed by the Commissioner of Central GST, Gurugram]

**Sistema Smart Technologies Limited** **……Appellant**
334, Udyog Vihar, Phase-IV,
Gurugram, Haryana

*VERSUS*

**Commissioner of Central Goods & Service Tax, Gurugram** **……Respondent**
Kendriya Utpad Shulk Bhawan,
Plot No. 36-37, Sector 32,
Gurugram, Haryana

**APPEARANCE:**

Shri Gajendra Maheshwari and Ms. Priyamwada Sinha, Advocates for the Appellant

Shri Raj Pal Sharma, Special Counsel (Authorized Representative) for the Respondent

**CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**
**HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 60619/2025**

DATE OF HEARING: 28.02.2025
DATE OF DECISION: 23.06.2025

**S. S. GARG :**

The present appeal is directed against Order-in-Original dated 23.02.2023 passed by the Commissioner of Central Goods & Service Tax, Gurugram, whereby the learned Commissioner has confirmed the demand of service tax udner Section 73(1) of the Finance Act,

1994 alongwith interest under Section 75 of the Act and penalties under Sections 77 and 78 of the Act. Details of demands confirmed are given herein below:

| **Period of dispute :**<br>**FY 2016-17 to FY 2017-18 (up to 30 June 2017)** | |
|---|---|
| **Demand of service tax under the proviso to Section 73(1) of the Finance Act, 1994** | **Amount (in Rs.)** |
| Alleged short/non-payment of service tax on Government dues on reverse charge basis | |
| Service tax calculated on the Additional License Fee of Rs. 222.1 cr. for FY 2016-17 | 33,32,00,000/- |
| Service tax calculated on the Additional License Fee of Rs. 69.41 cr. [i.e. Rs. 222.1 cr. + 25% (estimated on best judgment basis)] for the period 01.04.2017 to 30.06.2027 (i.e. 3 months) | 10,41,00,000/- |
| **Total** | **43,73,00,000/-** |
| Interest under Section 75 of the Finance Act, 1994 | Not quantified |
| Penalty under Section 77 of the Finance Act, 1994 | 10,000/- |
| Penalty under Section 78 of the Finance Act, 1994 | 43,73,00,000/- |

2. Briefly stated facts of the present case are that the appellant were engaged in providing taxable services i.e. Telecommunication Service by Telegraph Authority as defined in the Finance Act, 1994 and Rules/Notifications issued thereunder.

2.1 An enquiry was initiated against the appellant vide letter C. No. IV(12)/GST-GGM/AE/Gr-10/Telecom/606/2019-20/18983 dated 19.02.2020 on the issue of short payment /non-payment of service tax on Government dues on Reverse Charge basis. In the aforesaid communication, following information/documents were sought from the appellant:

*(i) Nature of the telecom services received from the Department of Telecom ('DOT').*

*(ii) Any agreement(s) entered w.r.t. point no. (i) with DoT*

*(iii) To clarify if there is any dispute with the DoT regarding the concept of Adjusted Gross Revenue ('AGR'). In case of any disputes, Demand/Notice/Note regarding the same was sought.*

*(iv) Computation sheet pertaining to calculation of license fees/spectrum fees/other fees payable/paid to DoT from 01.04.2016.*

*(v) Copy of invoice/bills/notes/other documents (period wise) generated during the course of payment of appropriate fees to DOT.*

*(vi) Details of Service Tax/GST paid/payable under Reverse Charge Mechanism, with respect to AGR, for the period April 2016 to January 2020 along with challans.*

*(vii) Post to Order of the Hon'ble Supreme Court with respect to AGR in Civil Appeal No. 5882/2015 (clubbed with other civil appeals), details of any self-assessment of telecom dues along with payment, details both with respect to DOT and Service Tax/GST Department.*

*(viii) Reconciliation sheet of Service Tax/GST deposited (separately) under reverse charge alongwith balance sheet.*

2.2 In response, the appellant, vide their letter dated 21.07.2020, submitted their reply as under:

*(i) The Company was awarded Basic Telephony Service License by Department of Telecommunications ('DOT') on 4 March 1998 for the Rajasthan service area. In accordance with the DoT guidelines on Unified Access (Basic and Cellular) Services License ('UAS') dated 11 November 2003, the Company migrated to the UAS with*

*effect from 14 November 2003. On 3 October 2013, DoT issued Unified License - Access Services to the Company for eight telecom circles namely Delhi, Gujarat, Karnataka, Kerala, Kolkata, Tamil Nadu, Uttar Pradesh (West) and West Bengal for a period of 20 years. The company is providing the Telecom services to customer as per the License issued by DOT. In November 2015, SSTL (the appellant herein) entered into a demerger agreement with Reliance Communications Limited ('RCOM'). Pursuant to such agreement, SSTL agreed to transfer its telecommunication undertaking to RCOM on a going concern basis under a court approved scheme of arrangement pursuant to provisions of Sections 391 to 394 of the Companies Act, 1956 ("SCHEME"). The SCHEME was approved by Hon'ble High Court of Rajasthan and Bombay on 30 September 2016 and 7 October 2016 respectively. The SCHEME became effective on 31 October 2017. Consequent to demerger of telecom business undertaking, all the telecom licenses were cancelled by DOT.*

*(ii) The Company is a party to the Civil Appeal Nos. 6328-6399 of 2015 in the case of Union of India Vs. Association of Unified Telecom Service Providers of India etc related to the dispute with DOT on the concept of AGR. However, the Company has duly discharged its service tax liability under Reverse Change Mechanism ('RCM') on the payment made to DOT for License fee calculated on AGR basis for the services availed w.e.f. 1 April 2016 till 31 October 2017. W.e.f. 31 October 2017, SSTL has demerged the telecom business to RCOM pursuant to the approval of the Scheme of arrangement under Section 391-394 of Companies Act, 1956 by the Hon'ble High Courts of Rajasthan and Bombay. Further, on 20.10.2017, the DOT gave its approval to the SSTL and RCOM for the transfer of the SSTL's telecom business including spectrum to RCOM. In the said communication, DOT stated that the licenses held*

*by the SSTL stand cancelled with immediate effect and simultaneously assets and liabilities of SSTL in respect of licenses in various LSAs are transferred to respective licenses held by RCOM. In view of Scheme of arrangement, any further DOT demand for License fee, if any, shall be raised and payable by RCOM. Further DOT Policy on merger and acquisition guidelines 2014 stated that any demand raised for pre-merger period of transferor company shall be paid by resultant entity, relevant extract of DOT Policy is given below:*

> *"3(m) - All demands, if any, relating to the licenses of merging entities, will have to be cleared by either of two licensees before issue of the permission for merger/transfer of licenses/authorization. This shall be as per demand raised by the Government/licensor based on the returns filed by the company notwithstanding any pending legal cases or disputes. An undertaking shall be submitted by the resultant entity to the effect that any demand raised for pre-merger period of transferor or transferee company shall be paid However, the demands except for one-time spectrum charges of transferor and transferee company, stayed by the Court of Law shall be subject to outcome of decision of such litigation. The one-time spectrum charges shall be payable as per provisions in para 3(1) above of these guidelines."*

*(iii) SSTL is not a licensee w.e.f. 31 October 2017. Accordingly, all liability arising from the dispute related to payment of fees to DOT on cancelled license stands transferred to RCOM as per DOT approval dated 20 October 2017. Hence, RCOM is liable to pay the disputed amount to DOT, if any, determined in accordance with decision of Hon'ble Supreme Court of India vide its order dated 24 October 2019. DOT Shall raise all demands, if any, on RCOM accordingly.*

*(iv) The assessee has submitted self-assessment of telecom dues for the period up to October 2013 amounting*

*to Rs.72,90,550/- on provisional basis. Since period covered in self-assessment is before introduction of Reverse charge on Telecom services provided by DOT, no service tax is leviable on such payment.*

*(v) The assessee submitted the computation sheet with respect to calculation of License fee/ Spectrum fees/ other fees payable/paid to DOT from 01.04.2016 and Challans for payment made to DOT were enclosed in response to the above letter and details of Service Tax/ Goods & Services Tax deposited under Reverse Charge Mechanism in respect of payment made for government dues from April 2016 to January 2020 along with challans and reconciliation of Service Tax/ GST paid under RCM with the financials.*

2.3 On this issue another letter under C. No. IV(12)/GST-GGM/AE/Gr-10/Telecom/606/2019-20/588 dated 31.05.2021 was issued to the appellant wherein following clarification was sought:

*(i) copies of agreement with DOT.*

*(ii) whether any additional amount has been paid / became payable to the DOT consequent to the order of the Hon'ble Supreme Court in CA No. 6328-6399 of 2015 and in case, additional amount has been paid to the DOT in view of Hon'ble Supreme Court Order, whether the additional liability of payment service tax/GST has been discharged or not.*

*(iii) the month wise details of additional amount paid / payable to the DOT alongwith details of service tax/ GST amount paid / payable thereon.*

*(iv) Copies of Demand Notice issued by the DOT for payment of additional amount subsequent to the order of the Hon'ble Supreme Court in CA No. 6328-6399 of 2015.*

*(v) As per Hon'ble Supreme Court order dated 01.09.2020 in the Misc Application (D) No. 9887 of 2020 in Civil Appeal No. 6328-6399 of 2015, it is found mentioned under column 'Amounts recoverable from Major TSPs as per Preliminary Assessments' that Total demand of DOT incorporating C&AG and Special Audit as on October 2019 in respect of RCOM and SSTL is Rs. 25,199.27 crores. Out of this, amount of Self-Assessment by SSTL, pursuant to Hon'ble Supreme Court Judgement is Rs. 222.1 crores and out of 222.1 crores, an amount of Rs. 0.73 crores has been paid SSTL up to 06.03.2020. Month wise details, w.e.f. 01.04.2016 to till date of the amount paid/payable to the DOT was sought consequent to the order of the Hon'ble Supreme Court alongwith details of service tax/ ST amount paid/payable thereon.*

2.4 In response to the above letter dated 31.05.2021, the appellant, vide their letter dated 14.06.2021, submitted the following information:

*(i) copy of the license agreements viz. UASL License (22 License agreements) and Unified License with authorization of NLD & ISP submitted. Out of 22 licenses, 21 licenses have been cancelled by Hon'ble Supreme Court on 2nd February, 2012 under its 2G judgement and on 3rd October, 2013, SSTL has been issued UL authorization for 8 telecom circle only with authorization of NLD and ISP later.*

*(ii) SSTI, has not paid any amount, after the order dated 01.09.2020 of Hon'ble Supreme Court. Further no demand has been raised by Department of Telecommunication (DOT) on SSTL after the said order dated 01.09.2020 Since the Company has not paid due as per said order, so there is no question of payment of service tax liability.*

*(iii) that in the above order dated 01.09.2020, Hon'ble Supreme Court has given the total demand amount, which were shared by DOT. As per the demand details shared by DOT, the liability for RCOM is Rs. 25,199.27 crores. There was no separate demand mentioned in the name of the Company (SSTL), rather it has been shown against the combined entity (i.e., entity emerged pursuant to the merger of telecom business) by DOT itself. The Company has not paid any amount after the said order which belongs to the period w.e.f. 1st April, 2016. Further, the Company has made the payment of Rs. 0.73 crores on 06.03.2020. Kindly note that the payment, which the Company made, belongs to the period up to 2012-13 only. Since this payment pertains up to FY 2012-13, service tax is not applicable. From the above, it is clear that there is no liability of SSTL in pursuant to order of Hon'ble Supreme Court dated 01.09.2020. DOT by own admission vide affidavit in Hon'ble Supreme Court has shown AGR demand as liability of RCOM. There is no liability in the name of the Company (SSTL). Further, DOT has filed an affidavit dated 07.04.2021 before the Supreme Court in compliance of order dated 01.09.2020 placing on record the total outstanding AGR dues against the TSP's and respective payments received thereof against the RCOM and no amount is shown against Company.*

2.5 Besides this, certain further information was also sought from DOT by the Revenue and after obtaining the information from DOT and the information supplied by the appellant, the Revenue entertained the view that the appellant have short paid the service tax pertaining to the additional license fees for the period FY 2016-17 and FY 2017-18 (up to June 2017) on reverse charge basis. Thereafter, a show cause notice ('SCN') dated 07.10.2021 was

issued to the appellant alleging short payment of service tax and proposing service tax demand amounting to Rs. 43.73 crores for the period 01.04.2016 to 30.06.2017 alongwith interest under Section 75 and penalties under Sections 76, 77 and 78 of the Act. The appellant filed detailed reply on 10.12.2021 alongwith documents and in the said reply, the appellant stated as under:

- *The SCN issued to the appellant was time barred since the demand raised pertains to the FY 2008-09 to FY 2013-14 (up to September 2013) and not FY 2016-17 and FY 2017-18 (up to 30 June 2017) as alleged in the SCN.*
- *Extended period of limitation was not invocable since there was no fraud. collusion, willful misstatement, suppression of facts, or intent to evade tax in the instant case.*
- *License fee/spectrum charges payable to DOT pursuant to the AGR Judgment, pertained to the 21 cancelled licenses for FY 2008-09 to FY 2013-14 (up to September 2013).*
- *Service tax was exempt on license fee/spectrum charges payable for the period prior to 01 April 2016 vide Mega Exemption Notification No. 25 of 2012 (as amended vide Notification No. 39/2016-ST dated 02 September 2016) and vide Circular No. 192/02/2016-ST dated 13 April 2016.*
- *Tax demand computed in the SCN for FY 2017-18 (up to June 2017) was based on taxable value which was assumed by the department on best judgment basis.*
- *Interest imposed under Section 75 of the Act was unsustainable.*
- *No penalty was leviable on the appellant.*

2.6 After following the due process, the learned Commissioner, vide the impugned order, confirmed the demand alongwith interest

and penalties under Sections 77 and 78 of the Act, however, penalty under Section 76 of the Act was dropped. Aggrieved by the said order, the appellant are before us.

3. Heard both the parties and perused the material on record.

4. The learned Counsel for the appellant has filed his written submissions dated 27.05.2024 and 06.02.2025 and submitted that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law, and binding judicial precedents.

4.1 The learned Counsel submits that the service tax underwent a paradigm shift w.e.f. 01.07.2012 with the introduction of negative list regime and consequently, the 'support services' provided by the Government became taxable on the recipient of services under this regime. Section 68 of the Finance Act, 1994 read with Notification No. 30/2012-ST dated 20.06.2012 ('RCM Notification'), stipulates that the services provided by the Government by way of 'support services' shall be payable by the recipient on RCM. He further submits that the RCM Notification was further amended by Notification No. 18/2016-ST dated 01.03.2016, wherein the words 'by way of support services' were omitted and this Notification became effective from 01.04.2016. He also submits that under the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012, CBIC enlisted certain services that were made exempt from payment of service tax with effect from 01.07.2012; through Notification No. 22/2016 dated 13.04.2016, the Mega Exemption

Notification was amended to exempt service tax on the services provided by the Government by way of allowing a business entity to operate as a telecom service provider or use radio frequency spectrum during the FY 2015-16; subsequently, vide Notification No. 39/2016 dated 02.09.2016, the Mega Exemption Notification was further amended to exempt service tax on license fee/spectrum charges during the period prior to 01.04.2016; thus, no service tax was applicable on the license fee payable for the period prior to 01.04.2016 and this position is not disputed in the SCN as well as the impugned order passed by the Commissioner.

4.2 The learned Counsel further submits that overall three sets of telecom licenses were awarded to the appellant, namely:

(a) **Original License** – This license was awarded on 04.03.1998 for Rajasthan circle. Later the appellant migrated to 2G Licenses with effect from 14.11.2003.

(b) **2G Licenses** - These licenses were awarded on 25.01.2008 for 21 telecom circles. Subsequently, these licenses were cancelled in view of the Hon'bie Supreme Court's judgment dated 02.02.2012 (‘the 2G Spectrum Judgment'). Accordingly, the validity of 2G Licenses ended on 11.03.2013 (for 13 telecom circles) and 03.10.2013 (for remaining 8 telecom circles), which is clearly described in the DOT’s office memorandum dated 21.01.2014 wherein all the licenses that were cancelled vide the 2G Spectrum Judgment are enlisted.

(c) **New Licenses** - In March 2013, the appellant participated in a spectrum auction and were awarded eight New Licenses for eight telecom circles on 03.10.2013.

4.3 The learned Counsel further submits that in November 2015, the appellant entered into an agreement with Reliance Communications Limited ('RCOM') for a demerger resulting in transfer and vesting of its telecom business including license and spectrum to RCOM under the provisions of the Companies Act; accordingly, a Scheme of Arrangement was framed, wherein all the identified liabilities (including the liability of Rs. 221.4 crores self-assessed by the appellant during pending adjudication of Aggregate Gross Revenue dispute) were transferred to RCOM. In this regard, he refers to the relevant para of the Scheme wherein it is mentioned that all the identified liabilities stand transferred to RCOM; Schedule 1 of the Scheme wherein it is mentioned that the identified liabilities include DOT liabilities for the identified disputes as provided in Annexure C of this Schedule; Annexure C of the Schedule 1 where DOT liability of Rs. 221.4 crores for the FY 2001-02 to 2012-13 is mentioned. He further submits that the Scheme was duly sanctioned by Hon'ble Rajasthan High Court on 30th September 2016 as well as by Hon'ble Bombay High Court on 2nd October 2016; thereafter, the DOT also gave its approval for transfer of the appellant's telecom business, including its all assets and liabilities in respect of Original License and New Licenses to RCOM vide its letter dated 20th October 2017; the Scheme became effective on

31.10.2017, i.e., when the same was filed before the concerned Registrar of Companies.

4.4 The learned Counsel further submits that on 23rd April 2015, the Telecom Disputes Settlement & Appellate Tribunal (‘the TDSAT'), New Delhi bench, in the case of **Association of Unified Service Providers of India & Others vs. Union of India [Petition No. 7 of 2003]**, decided that telecom operators are not liable to pay additional amount of license fee or spectrum charges to the Department of Telecommunications (‘DOT’); the said order of the TDSAT was challenged by the Government before the Hon’ble Supreme Court and the Hon’ble Supreme Court on 24th October 2019, in the case of **Union of India vs. Association of Unified Telecom Service Providers of India & Others [Civil Appeal Nos. 6328-6399 of 2015]**, ruled that AGR should also include non-core revenues of telecom operators; thus, the telecom operators became liable to pay additional license fee and additional spectrum charges to the DOT; after the judgment of the Hon’ble Supreme Court, correspondences were exchanged between the DOT and the appellant regarding payment of the additional license fee and the stand of the appellant was that they were not liable to pay the additional license fee since all the liabilities were transferred to RCOM. He further submits that the DOT initially intended to recover the entire additional license fee pertaining to the 2G Licenses (amounting to Rs. 221.4 crores) from the appellant; the DOT in its letter dated 11th October 2019 opined that RCOM was responsible to bear liabilities with respect to Original License and New Licenses,

whereas the appellant was responsible to bear liabilities in respect of the licenses that were cancelled vide the 2G Spectrum Judgment; subsequently, in an affidavit dated 21st August 2020 filed by the DOT before the Hon'ble Supreme Court, the DOT placed on record the total outstanding additional license fee against the telecom operators and in the said affidavit, the appellant's name was not mentioned anywhere and the total outstanding additional license fee of Rs. 25,199.27 crores was shown against the liability of RCOM; further, the DOT again filed an affidavit dated 7th April 2021 before the Hon'ble Supreme Court providing the details of the total outstanding additional license fee against the telecom operators and respective payments received thereof. In the said affidavit, the total demand of Rs. 25,199.27 crores was shown only against RCOM and further Rs. 0.73 crores was shown as the payment made by the appellant. He also submits that the DOT admitted the position that no liability towards the additional license fee was payable by the appellant except for Rs. 0.73 crores paid by the appellant and any such liability apart from Rs. 0.73 crores was payable by RCOM.

4.5 The learned Counsel further submits that even otherwise, the additional license fee of Rs. 222.1 crores (comprising of the initially self-assessed liability of Rs. 221.4 crores plus liability of Rs. 0.73 crores over and above the initially self-assessed liability of Rs. 221.4 crores) on which service lax demand has been confirmed in the impugned order pertained to the 2G Licenses that were cancelled much before 01.04.2016, therefore, service tax was exempt on the

same. In this respect, he places reliance on the following documents which are on record:

- *Detailed circle-wise and year-wise break-up of the Additional License Fee of Rs. 222.1 crores showing that the amount pertains to 21 2G Licenses (i.e., the licenses correspond to the DOT's letter dated 21.04.2014).*
- *Certificate of Chartered Accountant certifying the detailed circle-wise and year-wise break-up of the Additional License Fee of Rs. 222.1 crores.*
- *Appellant's letter dated 25th February 2020 to the DOT providing circle-wise break-up of the Additional License Fee of Rs. 222.1 crores (i.e., initially self-assessed liability of Rs. 221.4 crores plus liability of Rs. 0.73 crores over and above the initially self-assessed liability of Rs. 221.4 crores).*
- *Appellant's letter dated 17th February 2020 to the DOT referring to the fact that the sum of Rs. 221.4 crores pertains the Cancelled Licenses.*

4.6 He further submits that there is nothing on record to justify the Department's stand that the entire liability of Rs. 222.1 crores on which service tax has been demanded pertains to the period FY 2016-17; further, there is nothing on record to show that the appellant were liable to pay the Additional License Fee of Rs. 69.41 crores during the FY 2017-18 (up to June 2017) calculated by the Department on best judgment basis.

4.7 The learned Counsel further submits that even otherwise, the liability to pay service tax in terms of the Point of Taxation Rules, 2011 did not arise. Rule 7 of the Point of Taxation Rules, 2011 determines the point of taxation in case of specified services or

persons and the said Rule was amended by Notification No. 24/2016-ST dated 13.04.2016 wherein a proviso determining the point of taxation in case of services provided by the Government to any business entity was inserted. The proviso stipulates that in cases where services are provided by the Government to a business entity, the point of taxation arises when the payment becomes due as specified in the invoice, bill, challan or any other document issued by the Government demanding such payment or when such payment is made. He also submits that assuming the entire liability to pay the Additional License Fee of Rs. 222.1 crores pertained to the period FY 2016-17 or FY 2017-18 (up to June 2017), even then the point of taxation did not arise in as much as no invoices, bill, challan nor any other document was issued by the Government demanding such payment and no payment of the Additional License Fee was made by the appellant.

4.8 As regards the extended period of limitation, the learned Counsel submits that the entire demand is barred by limitation. He also submits that the service tax audit of the appellant for the period FY 2013-14 (2nd half) to FY 2017-18 (up to June 2017) was concluded and no demand on the Additional License Fee was raised against the appellant. He further submits that even for assuming but not admitting, that the license fee pertains to the period FY 2016-17 and FY 2017-18 (up to June 2017), the extended period of limitation could not have been invoked in the absence of any fraud, collusion, willful mis-statement, suppression of facts or intent to evade tax etc. He further submits that the appellant have been filing ST-3

returns giving the complete facts and information required to be given therein as per their *bona fide* understanding of law and even service tax audit did not raise the demand on the appellant on the license fee/spectrum charges; further no demand had been raised in the Final Audit Report dated 28.05.2019 on the issue raised in the SCN on account of any shortfall of tax on the license fees/spectrum charges payable by the appellant to the Government; further, the alleged transactions forming basis for demand in the impugned order, were duly recorded in the books of accounts of the appellant. He further submits that the appellant duly discharged the amounts of service tax alongwith cess for the period FY 2016-17 and FY 2017-18 (up to June 2017) for the services availed from the Government on reverse charge basis. In order to prove that the entire demand is barred by limitation and extended period of limitation has been wrongly invoked, the learned Counsel relies on the following decisions:

a) Anand Nishikawa Co Ltd vs. CCE, Meerut – (2005) 7 SCC 749
b) Continental Foundation Joint Venture vs. CCE, Chandigarh-I – 2007 (216) ELT 177 (SC)
c) Cosmic Dye Chemical vs. CCE – 1995 (75) ELT 721 (SC)
d) S. Lubrichem Industries Ltd vs. CCE – 1994 (73) ELT 257 (SC)
e) Shahnaz Ayurvdics vs. CCE, Noida – 2004 (173) ELT 337 (All.) maintained by Supreme Court in 2004 (174) ELT A34 (SC)
f) Shaik Iqbal Mohammed vs. CCE & ST, Hyderabad-IV – 2019 (25) GSTL 545 (Tri. Hyd.)
g) Ador Fontech Ltd vs. CCE, Nagpur – (2013) 38 taxmann.com 66 (Mumbai CESTAT)
h) CST, Chennai vs. Rani Meyyammai Hall – 2019 (24) GSTL 218 (Tri. Chennai)
i) CGST vs. Adani Gas P. Ltd – (2017) 87 taxmann.com 13 (Gujarat)

j) Umang Boards Pvt Ltd vs. CCE, Jaipur – 2019-VIL-765-CESTAT-DEL-CE

4.9 He further submits that it is a settled position of law that where the assessee was under a *bona-fide* belief that no tax was payable, extended period of five years could not be invoked against the assessee. In this regard, he places reliance on the following decisions:

a) D.N. Pandey & Company vs. Commissioner of C. Ex. & S.T., Allahabad - 2019 (28) GSTL 108 (Tri.-All.)
b) Compark E Services Pvt. Ltd. vs. Commr. of C. Ex. & S.T., Ghaziabad - 2019 (24) GSTL 634 (Tri.-All.)

4.10 He further submits that it is a settled position of law that extended period cannot be invoked in situation where interpretation of legal provisions is involved. He also submits that it is a settled position of law that in order to attract Section 73(1) of the Finance Act, the burden of proof lies on the department to show that the appellant have taken positive steps with intent to withhold information from the department and to evade payment of service tax; mere inaction or failure will not suffice; and in the present case, the department has failed to discharge the burden of proof.

4.11 The learned Counsel further submits that besides the documents furnished by the appellant, the appellant have also submitted the Chartered Accountant Certificate ('CA Certificate') providing year-wise bifurcation of license fee/spectrum charges of the entire amount of Rs. 222.1 crores. The said certificate states that the entire liability pertains to the FY 2008-09 to FY 2013-14 (up to September / 03 October 2013). He further submits that the said

CA Certificate was rejected by the department on the ground that the same was issued without any corroborative document and only on the basis of the information provided by the appellant. He further submits that it is a settled position of law that a CA Certificate cannot be rejected by the department without providing any evidence to contradict the same. In this regard, he relies on the following decisions:

a) P.P. Products vs. CC, Chennai – 2019 (367) ELT 707 (Mad.)
b) Rajashree Polyfil vs. CCE, Surat-II – Order dated 08.06.2023 in Excise Appeal No. 11893 of 2013, passed by CESTAT Ahmedabad

5. On the other hand, the learned Special Counsel (Authorized Representative) for the Revenue has filed the written submissions and reiterated the findings of the impugned order.

5.1 The learned Special Counsel submits that the points raised by the appellant in their written submissions dated 27.05.2024 are mostly repetitive and are not relevant to the current proceedings for the following reasons:

a) Regarding their contention that service tax was not payable on the Telcom Services prior to 1.6.2016 is a matter of fact and it is not disputed by any departmental authority at any stage. In the SCN and OIO service tax has been demanded and confirmed for the period 2016-17 to 2017-18. The appellant has unnecessarily devoted much of the space of its appeal in asserting again and again that the demand is for the period 2008-09 to 2013-14 when the licensing of spectrum by the Government was not taxable at all. The

above modified submission is clearly a correction of the appellant's position on the subject.

b) Revenue has never disputed the fact that the appellant's business of telecommunication services got demerged/transferred to RCOM w.e.f. 31.10.2017 and accordingly the business-related assets and liabilities also shifted to RCOM. Revenue's simple submission is that the demerger of the appellant's business in 2017 has no bearing on the appellant's service tax liability for the period 2016-17 & 2017-18 for three reasons. First, the demerger of the Telcom business became effective from 31.10.2017 which is clearly after the period for which service is demanded in this case. Secondly, demerger of the Telcom business was approved as per Sections 391 to 394 of the Company Act and it has nothing to do with the appellant's service tax liability for the period the appellant was the service tax assessee and was liable to pay service tax. Service tax was leviable under Finance Act and the same cannot be negotiated by two private parties under an instrument like "Scheme of Arrangement" permissible under above sections of the Company Act. The Department of Revenue was never the party to the demerger arrangement and there is no provision under Finance Act, 1994 to transfer the statutory tax liability to pay service tax to a non-assessee person like RCOM. Since RCOM was not an assessee in the Gurugram Commissionerate for the aforesaid spectrum services received by the appellant,

RCOM could not be fastened with any amount of service tax on the ground of the merger of the business of the appellant. In this connection it is pertinent to clarify here that there is a difference between the 'statutory liability to pay tax' and 'liability to pay tax arrears. While statutory liability to pay tax is always on the taxable person and cannot be negotiated, transfer of tax arrears can be negotiated and transferred to any other person who acquires the business along with liabilities encumbered with business. Third most Important reason is that the 'Scheme of Arrangement' in the present case very aptly does not have any provision or para which speak that the tax liability of the appellant will be shifted to RCOM even for the period prior to 31.10.2017. the relevant para 4.5 of the Scheme of the Arrangement at page 406-407 dealing with transfer of assets and liabilities clearly states that all the identified assets and liabilities of the transferred undertaking, as set out in part I and part II of Schedule I, respectively shall be deemed to be transferred on the appointed date at the consideration provided therein. While Part II of the Schedule I available at page 425 of the appeal speak loudly about the deferred spectrum payment obligation of auction 2013 to DOT and various other liabilities, it does not have even a single word regarding transfer of its service tax liability. Thus, transfer of appellant's liability to pay addl. Licence fee to RCOM on account of demerger has no nexus with its service tax liability and its liability to pay service tax

remains intact even after its demerger on 31.10.2017 and advent of GST regime by virtue of Sections 173 and 174 of the CGST Act, 2017.

c) As explained in above sub-para b, the appellant's liability to pay additional license fee to DOT for receiving spectrum service on account of AGR is entirely different from its service tax liability. While spectrum charges are business related liability for which DOT has also been party to the demerger of the appellant's business, non-insistence by DOT for the recovery of the additional spectrum charges cannot be the basis for non-recovery of the service tax which has totally different dynamics.

d) In the OIO the reason for considering Rs. 222.1 crores as the service value for the year 2016-17 has been given that in the Supreme Court's Order dated 1.9.2020 the amount of Rs. 222.1 crores is mentioned as recoverable amount from the appellant on account of AGR decision and in Note 2 it is clarified that the recoverable amount is generally calculated for the period up to 2016-17. Knowing that the said amount included the appellant's liability for the period prior to the year 2016-17 also, the investigating officer was fair enough to write two letters dated 19.2.2020 and 31.5.2021 to provide the exact amount paid or payable to DOT on account of the AGR decision. But the appellant did not come forward with the relevant details and instead continued to confuse the

service tax matter with its liability to pay spectrum charges, demerger with RCOM and even mislead by writing a letter dated 21.7.2020 (Ans. to question No. 3 at page 905 of the appeal) that they have paid service tax on AGR value without detailing when and how they have paid differential service tax. The above version is completely contradictory to the stand taken by the appellant that they are not liable to pay differential service tax in this case. In its another letter dated 14.6.2021 (page 1480 of the appeal) in reference to department's letter dated 31.5.2021 seeking the amount paid or payable to DOT on account of AGR decision, the appellant, instead of giving relevant answer, gave a distorted reply that they have not paid any amount to DOT after AGR decision and DOT also did not demand any amount. The query how much they were liable to pay additional spectrum fee on account of AGR decision to determine service tax for the years 2016-17 and 2017-18 (up to June 2017) was deliberately ignored. In the above circumstances when the appellant was not ready to share the correct amount of additional fee payable to DOT, the Commissioner per force considered the entire sum of Rs. 222.1 Cr as the service value for the year 2016-17 and Rs. 69. 41 Cr. for the year 2017-18 based on best judgement assessment provided under section 72 of the Finance Act. It is noteworthy that the information regarding additional fee payable in compliance of AGR decision relevant for calculating service tax for the two

years, irrespective of the fact whether the said additional amount is payable to DOT or not, is not provided until now in its appeal or in written submission. Several letters written to DOT as referred to in para 4 at page 4 of the Written Submission dated 27.5.2024 are not relevant to the main issue involved in the appeal under consideration.

e) The contention that the liability to pay service tax in terms of point of Taxation Rules, 2011 did not arise is not a new argument. It is already raised in the appeal before the Hon'ble Tribunal for which I have already submitted in my Synopsis in detail (para 3.4 at page 4) that POT Rule 7 iş not applicable in this case as it is not a fresh case of levy of service tax and is rather a case of recovery of differential service tax only. The point of taxation in this case was already triggered when the appellant had paid service tax during the period 2016-17 and 2017-18 and in the current proceeding the issue is regarding recovery of differential service tax on account of revision of the value of spectrum charges by the Hon'ble Supreme Court. The above contention of the appellant is clearly based on its assumption that it is a fresh case of levy of service tax which in fact it is not and cannot be at all. This contention has no legal basis as no fresh case of service tax could be initiated in 2021 when SCN was issued to the appellant because Chapter V of the Finance Act, 1994 is no longer in existence from 1.7.2017 by virtue of section 173 of CGST Act, 2017.

f) As regards the averment that the demand is time barred made in para IX of the written Submissions, it is submitted that detailed comments on behalf of the Revenue have already been provided in Paras 4 & 5 of the Synopsis submitted during the last fruitful hearing on 13.5.2024 before the CESTAT and the appellant has not added any other new argument. In the written submissions dated 27.5.24, the appellant has repeated the contentions already made in the Appeal that (i) service tax audit of the appellant for the period 2013-14 to 2017-18 up to June 2017 was conducted and no demand was raised against the appellant, (ii) if the Tribunal confirms that the impugned demand pertains to the period 2008-09 to 2012-14, the normal as well as extended period of limitation has expired before issuing of SCN and (iii) assuming the demand of service tax pertains to the period 2016-17, the extended period of limitation cannot be invoked in absence of any suppression of facts or contravention of any provision with intent to evade service tax They were not liable to pay service tax owing to a favourable decision of TDSAT in the case Association of Unified Service Providers of India & Others Vs. Union of India.

g) In regard to above three contentions in support of their argument of time limitation, it is humbly submitted that none of them is factually or legally tenable in this case. The argument that audits of their records was conducted and no demand was raised is completely misplaced as the same had

been concluded on 28th May, 2019 when there was no issue relating to recovery of additional spectrum charges from the Telcom Operators. The AGR decision was delivered by the Apex Court on 24th October, 2019 and thus the basis for demand of differential service tax came into being much after the aforesaid audit. The second averment that if the Tribunal confirms that the demand pertains to the period 2008-09 to 2012-13 is fundamentally erroneous as a judicial body like Tribunal cannot be expected to confirm such bizarre demand of the appellant when service tax was not payable at all during the said period. The SCN and the OIO does not leave any doubt that the demand is clearly for the period 2016-17 to 2017-18 during which service tax was payable by the appellant on RCM basis and the appellant had paid the same on lower value. Even the appellant has accepted this fact in Para I, II and III of its Written Submission dated 27.5.2024 and thus the above argument is not compatible to its own admitted facts. Suppression of facts and contravention of Sections 67, 68, 70 of the Finance Act and Rules 6 and 7 of the Service Tax Rules are manifest in the case as the appellant did not inform the department by any mean regarding AGR decision and its consequential liability to pay differential tax, did not provide the detail of the additional fee payable to DOT in the wake of the AGR decision to determine its tax liability in spite of repeated correspondences from the investigating officers and has not paid, service tax arising out

of the Supreme Court decision till now. Reliance on TDSAT decision is entirely out of context as the same was overruled by the Supreme Court in the said AGR decision on 24th October, 2019 after which they did not have any reason not to pay tax on the basis of the TDSAT decision.

h) Appellant's assertion in Para X of its Written Submission that they have already paid service tax on the regular license fee for the period and provided break up license fee paid during the period 2016-17 to 2017-18 (up to 30.6.2017) is not relevant in the present proceeding as the department has not denied the fact of service tax paid earlier but has demanded differential service tax on account of revision of the spectrum value about which the appellant has maintained stoic silence.

i) Sub-para 3 of Para X of the Written submission of the appellant is devoted to respond to the Special Counsel's contentions on three counts during the hearing on 13.5.2024 before Hon'ble CESTAT. In this regard the appellant's first counter is. that Special Counsel's contention that the appellant was liable to pay service tax. on the additional fee attributed to the period 2016-17 and 2017-18 irrespective of the fact that such liability was recoverable from RCOM is a completely new allegation which is neither raised in SCN nor in the OIO. It is not explained as to how the departmental Counsel's contention is a new allegation and under which

pertinent provision of law it is prohibited. It is submitted that this argument is completely irrelevant as the very foundation of the SCN and the OIO is that the appellant is liable to pay differential amount of service tax on the additional fee payable by the appellant on account of the AGR decision for the aforesaid two years. The above contention of the departmental counsel is mere reiteration of what is already stated in SCN and OIO and is not a new allegation by any standard. Articulation of any such legal or even factual point is part and parcel of the appellate proceeding before the first appellate authority to facilitate to arrive at a fair conclusion. The second objection of the appellant that they had provided all relevant details regarding payment of service tax during the period 2016-17 and 2017-18 and thus the Revenue Counsel's averment that the appellant has not replied in any of its letters regarding its service tax liability for the above two years is not correct. It is submitted that this objection also does not have any force in as much as there is no dispute regarding the amount of service tax already paid by the appellant. The detail of already paid service tax was already available with the Department and therefore providing detail of service tax already paid did not have any relevance. The issue involved in the present proceeding is regarding payment of differential service tax over and above what is already paid which the appellant has not paid and also did not provide the required details necessary for

determination of the same. The appellant has no response about the above irrefutable fact of not providing the additional amount payable to DOT in compliance of the AGR decision and has ignored it throughout the proceeding on one pretext or other and a baseless objection is made that the Revenue Counsels contention regarding non providing of relevant details is not correct. Its letter dated 14.6.2021 to the Superintendent referred to in sub-para 3 of para X informing that no service tax was payable by them on account of AGR decision since the appellant had neither paid the additional fee nor DOT demanded, instead of supporting the appellant's objection, manifestly demonstrate how the appellant has devised various tactics for not providing the required details of additional spectrum charges payable by them, even if it was not actually payable by the appellant to DOT due to demerger of its Telcom business. The third counter to the contention of the Departmental Counsel' submission that the appellant did not provide the year wise bifurcation on the ground that they had provided circle wise break- up of the additional license fee of Rs. 222.1 crores which proved the amount pertains to 2G Licenses which were cancelled in 2013 is also completely devoid of any relevance because they did not provide the exact amount, pertaining to the period 2016-17 and 2017-18 (up to June 2017). The detail referred to by the appellant was neither relevant for the

department nor it was demanded by the Investigating Officers.

5.2 The learned Special Counsel has also tried to justify the invocation of extended period on the ground that *mala fide* of the appellant is writ large in not providing payment's details and are not paying the service tax to the Government. He has further submitted that the decisions relied upon by the appellant are not applicable to the facts of the present case. On the contrary, the decision relied upon by the Commissioner, extended period of limitation is very much applicable.

6. We have considered the submissions made by both the parties and perused the material on record as well as written submissions filed by both the sides.

7. It would be appropriate to first examine the issue whether the extended period of limitation could have been invoked in the facts and circumstances of the present case. We find that service tax audit of the appellant for the period 2013-14 to 2017-18 (up to June 2017) was duly completed and no demand for additional fee was raised against the appellant. We also find that the appellant have been regularly filing the ST-3 returns and have not suppressed any material facts from the department. Further, the appellant have been supplying all the information which was sought by the department. In the service tax audit proceedings, all the relevant documents, information and nature of activity undertaken were duly provided and explained by the appellant and no demand was raised

in the Final Audit Report dated 28.05.2019. Further, we find that the appellant have discharged the amounts of service tax alongwith cess for the period 2016-17 and 2017-18 for the services availed by them from the Government on reverse charge basis, which is duly recorded in the impugned order.

7.1 Further, we find that the entire demand has been raised on the basis of the AGR Judgment of Hon'ble Supreme Court. Further, we find that in the said AGR Judgment, the Additional License Fee was required to be paid by the telecom operators. But prior to the AGR Judgment of the Hon'ble Apex Court, the TDSAT vide its order dated 23.04.2015, in the case of Association of Unified Service Providers of India & Others vs. Union of India (supra), decided that telecom operator are not liable to pay additional amount of license fee or spectrum charges to the DOT, which clearly shows that it was an interpretation issue and suppression cannot be alleged against the appellant. As per the appellant, the liability to pay service tax on additional license fee pertains to FY 2008-09 to 2013-14 (up to September / 03 October 2013).

7.2 Further, we find that the Principal Bench of this Tribunal, in the case of **Shyam Spectra Private Limited vs. Commr of ST, Delhi-II** vide its **Final Order No. 56196/2024 dated 31.07.2024** in **Service Tax Appeal No. 50583 of 2017**, has examined the issue in details as to when extended period of limitation can be invoked to confirm the demand against the

assessee. It is pertinent to reproduce the relevant findings of the said decision, which are reproduced as under:

> "**13.** In order to appreciate whether the extended period of limitation was correctly invoked, it would appropriate to reproduce section 73 of the Finance Act as it stood at the relevant time. This section deals with recovery of service tax not levied or paid or short levied or short paid or erroneously refunded. It is as follows;
>
> > *"73.(1) Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:*
> >
> > *PROVIDED that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of-*
> >
> > *(a) fraud; or*
> >
> > *(b) collusion; or*
> >
> > *(c) wilful mis-statement; or*
> >
> > *(d) suppression of facts; or*
> >
> > *(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "one year", the words "five years" had been substituted."*
>
> **14.** It would be seen from a perusal of sub-section (1) of section 73 of the Finance Act that where any service tax has not been levied or paid, the Central Excise Officer may, within one year from the relevant date, serve a notice on the person chargeable with the service tax which has not

been levied or paid, requiring him to show cause why he should not pay amount specified in the notice.

**15.** The 'relevant date' has been defined in section 73 (6) of the Finance Act as follows;

> ***73(6)*** *For the purpose of this section, "relevant date" means,-*
>
> *(i) In the case of taxable service in respect of which service tax has not been levied or paid or has been shortlevied or short paid-*
>
> *(a) where under the rules made under this Chapter, a periodical return, showing particulars of service tax paid during the period to which the said return relates, is to be filed by an assessee, the date on which such return is so filed;*
>
> *(b) where no periodical return as aforesaid is filed, the last date on which such return is to be filed under the said rules;*
>
> *(c) in any other case, the date on which the service tax is to be paid under this Chapter or the rules made thereunder.*

**16.** The proviso to section 73(1) of the Finance Act stipulates that where any service tax has not been levied or paid by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of the Chapter or the Rules made there under with intent to evade payment of service tax, by the person chargeable with the service tax, the provisions of the said section shall have effect as if, for the word "one year", the word "five years" has been substituted.

**17.** It is correct that section 73 (1) of the Finance Act does not mention that suppression of facts has to be "wilful" since "wilful" precedes only misstatement. It has, therefore, to be seen whether even in the absence of the expression "wilful" before "suppression of facts" under

section 73(1) of the Finance Act, suppression of facts has still to be willful and with an intent to evade payment of service tax. The Supreme Court and the Delhi High Court have held that suppression of facts has to be "wilful" and there should also be an intent to evade payment of service tax.

**18.** In Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay- 1995 (78) ELT 401 (SC), the Supreme Court examined whether the Department was justified in initiating proceedings for short levy after the expiry of the normal period of six months by invoking the proviso to section 11A of the Excise Act. The proviso to section 11A of the Excise Act carved out an exception to the provisions that permitted the Department to reopen proceedings if the levy was short within six months of the relevant date and permitted the Authority to exercise this power within five years from the relevant date under the circumstances mentioned in the proviso, one of which was suppression of facts. It is in this context that the Supreme Court observed that since "suppression of facts" has been used in the company of strong words such as fraud, collusion, or wilful default, suppression of facts must be deliberate and with an intent to escape payment of duty. The observations are as follows;

> *"4. Section 11A empowers the Department to reopen proceedings if the levy has been short-levied or not levied within six months from the relevant date.* ***But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts.*** *The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of court the context in which it has been used indicates otherwise.* ***A perusal of the proviso indicates that it has been used in company of such***

> ***strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty.*** *Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."*
>
> *(emphasis supplied)*

**19.** This decision was referred to by the Supreme Court in Anand Nishikawa Company Ltd. vs. Commissioner of Central Excise - 2005 (188) E.L.T. 149 (SC) and the observations are as follows:

> *"26 ……..This Court in the case of Pushpam Pharmaceutical Company v. Collector of Central Excise, Bombay, while dealing with the meaning of the expression "suppression of facts" in proviso to Section 11A of the Act held that the term must be construed strictly.* ***It does not mean any omission and the act must be deliberate and willful to evade payment of duty.*** *The Court, further, held :-*
>
> > "In taxation, it ("suppression of facts") can have only one meaning that the correct information was not disclosed deliberately to escape payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression."
>
> *27. Relying on the aforesaid observations of this Court in the case of Pushpam Pharmaceutical Co. v. Collector of Central Excise, Bombay [1995 Suppl. (3) SCC 462], we find that* ***"suppression of facts" can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty****. When facts were known to both the parties, the omission by one to do what he might have done*

*not that he must have done would not render it suppression. It is settled law that mere failure to declare does not amount to willful suppression. There must be some positive act from the side of the assessee to find willful suppression. Therefore, in view of our findings made herein above that there was no deliberate intention on the part of the appellant not to disclose the correct information or to evade payment of duty, it was not open to the Central Excise Officer to proceed to recover duties in the manner indicated in proviso to Section 11A of the Act."*

*(emphasis supplied)*

**20.** These two decisions in Pushpam Pharmaceuticals and Anand Nishikawa Company Ltd. were followed by the Supreme Court in the subsequent decision in Uniworth Textile Limited vs. Commissioner of Central Excise, Raipur - 2013 (288) E.L.T. 161 (SC) and the observation are:

*"18. We are in complete agreement with the principal enunciated in the above decisions, in light of the proviso to section 11A of the Central Excise Act, 1944."*

**21.** The Supreme Court in Continental Foundation Joint Venture Holding vs. Commissioner of Central Excise, Chandigarh-I - 2007 (216) E.L.T. 177 (SC) also held:

*"10. The expression "suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion" and, therefore, has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty.* ***Suppression means failure to disclose full information with the intent to evade payment of duty.*** *When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under Section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with*

*the knowledge that the statement was not correct."*

*(emphasis supplied)*

**22.** The Delhi High Court in Bharat Hotels Limited vs. Commissioner of Central Excise (Adjudication) -2018 (12) GSTL 368 (Del.) also examined at length the issue relating to the extended period of limitation under the proviso to section 73 (1) of the Finance Act and held as follows;

*"27. Therefore, it is evident that failure to pay tax is not a justification for imposition of penalty. Also, the word "suppression" in the proviso to Section 11A(1) of the Excise Act has to be read in the context of other words in the proviso, i.e. "fraud, collusion, wilful misstatement". As explained in Uniworth (supra), "misstatement or suppression of facts" does not mean any omission. It must be deliberate.* ***In other words, there must be deliberate suppression of information for the purpose of evading of payment of duty. It connotes a positive act of the assessee to avoid excise duty****.*

***Xxxxxxxx***

***Thus, invocation of the extended limitation period under the proviso to Section 73(1) does not refer to a scenario where there is a mere omission or mere failure to pay duty or take out a license without the presence of such intention.***

***Xxxxxxxx***

***The Revenue has not been able to prove an intention on the part of the Appellant to avoid tax by suppression of mention facts. In fact it is clear that the Appellant did not have any such intention and was acting under a bonafide belief."***

***(emphasis supplied)***

**23.** It is, therefore, clear that even when an assessee has suppressed facts, the extended period of limitation can be invoked only when "suppression" is shown to be wilful with intent to evade the payment of service tax."

7.3 Keeping in view the above facts and the Principal Bench's decision in the case of **Shyam Spectra Private Limited** (supra), we are of the considered opinion that the entire demand in this case is barred by limitation; accordingly, this issue is decided in favour of the appellant.

8. As regards the other issue, whether the license fee/spectrum charges of Rs. 222.1 crores pertain to period FY 2008-09 to 2013-14 and not for FY 2016-17, we find that the amount of Rs. 222.1 crores pertains to the dues of AGR self-assessed by the appellant in consequence to the judgment of Hon'ble Supreme Court in the case of Association of Unified Service Providers of India & Others (supra). These AGR dues pertained to licenses for FY 2008-09 to FY 2013-14 and did not pertain to FY 2016-17, because the license fee of Rs. 222.1 crores pertains to 21 licenses which were cancelled by the Hon'ble Supreme Court vide 2G Spectrum Judgment dated 02.02.2012. These licenses were cancelled on 11.03.2013 (for 8 service areas) and 03.10.2013 (for remaining 13 service areas) and therefore, the self-assessed amount of Rs. 222.1 crores does not pertain to the period beyond FY 2013-14 since all the licenses, for which the appellant assessed the amount of Rs. 222.1 crores, had expired by 03.10.2013.

8.1 Further, we find that it is also clear from the office memorandum dated 21.01.2014 issued by the DOT which categorically mentioned the last date of validity of all 21 licenses of

the appellant cancelled in consequence of the 2G Spectrum Judgment.

8.2 We also find that the appellant, vide letter dated 25.02.2020, had submitted a service area-wise breakup of the self-assessed amount of Rs.222.1 crores to the DOT. The service areas, mentioned by the appellant in the said letter, are identical to the service areas mentioned by the DOT in their office memorandum dated 21.01.2014. It clearly proves that the amount of Rs. 222.1 crores self-assessed by the appellant pertains to 21 licenses cancelled in consequence to the 2G Spectrum Judgment on 11.03.2013 and 03.10.2013.

8.3 We also find that the appellant had also submitted a CA Certificate providing year-wise bifurcation of the license fee/spectrum charges of the entire amount of Rs. 222.1 crores, which the Chartered Accountant after going through the records of the appellant and the information given by the appellant, certified that the entire liability pertains to the FY 2008-09 to 2013-14. The Commissioner, vide the impugned order, has rejected the CA Certificate on the ground that the same was issued without any corroborative document; this finding of the Commissioner is not legally correct in view of the various decisions cited supra by the appellant. It is a settled principle of law that a CA Certificate cannot be rejected by the department without providing any evidence to contradict the same.

8.4 Further, we find that the department in complete disregard to the list of documents/information submitted by the appellant, has arbitrarily held that the self-assessed license fee of Rs. 222.1 crores pertains to FY 2016-17.

8.5 Further, we also find that the appellant in November 2015, entered into a demerger agreement with Reliance Communications Limited ('RCOM'). Pursuant to such agreement, the appellant agreed to transfer its business to RCOM including the license and the spectrum on a going concern basis under a court approved scheme of arrangement pursuant to provisions of Sections 391 to 394 of the Companies Act, 1956 ("SCHEME") and the SCHEME was approved by Hon'ble High Courts of Rajasthan and Bombay on 30 September 2016 and 7 October 2016 respectively, and finally, the DOT has also given its approval and the same became effective w.e.f. 31.10.2017, and the same was filed before the Registrar of Companies.

8.6 We also find that the DOT filed an affidavit dated 21.08.2020 before the Hon'ble Supreme Court and in the said affidavit the name of the appellant was not mentioned anywhere and the total outstanding additional license fee was shown against the liability of RCOM. We also note that the DOT filed another affidavit dated 07.04.2021 before the Hon'ble Supreme Court, which shows the total demand of Rs. 25,199.27 crores only against RCOM.

8.7 We also note that the DOT has submitted the position that no liability towards additional license fee was payable by the appellant except for Rs. 0.73 crores paid by the appellant. Therefore, it is an

admitted position by the DOT that the appellant were not liable to discharge any amount towards the additional license fee in respect of original license, 2G licenses and new licenses except for Rs. 0.73 crores paid by them since the liability towards the same got transferred to RCOM.

8.8 Keeping in view the above facts, we hold that the demand of service tax on addition license fee/spectrum charges in the present case pertains to the period FY 2008-09 to 2013-14 which is also clear from the CA Certificate and during that period, service tax was not leviable on the license fee/spectrum charges and the same become chargeable to service tax w.e.f. 01.04.2016. Accordingly, this issue is also decided in favour of the appellant.

9. The other argument raised by the learned Counsel for the appellant against the demand of service tax by the Government, is that the appellant are not liable to pay service tax as the point of taxation has not triggered in this case in terms of Point of Taxation Rules, 2011. We find that Rule 7 of the Point of Taxation Rules, 2011, which determines the point of taxation in case of specified services or persons, was amended by Notification No. 24/2016-ST dated 13th April 2016 and inserted a proviso providing as to where services are provided by the Government to a business entity, the point of taxation arises when the payment becomes due as specified in the invoice, bill, challan, or any other documents issued by the Government demanding such payment; whereas in this case, no

invoice, bill, challan or any other document has been issued by the Government demanding additional license fee from the appellant.

9.1 We also find that in the instant case, the department could not establish that the consideration, for the services rendered, if any, has been paid by the appellant or is payable by them subsequently to the Government as evident from the affidavit discussed above.

9.2 We also note that as per the principle of *ejusdem generis*, the phrase *"any other document issued by the Government demanding such payment"* should only include documents of similar nature to an invoice, bill or challan. If we apply this principle, then the phrase *"any other document issued by the Government demanding such payment"* cannot be an agreement as considered by the department in the present case because the same is not issued in the nature of an invoice, bill or challan. This principle of law has been considered in the following cases:

- D.N. Singh vs. Commr of Income Tax – (2024) 3 SCC 378
- Commr of Commercial Tax, Uttar Pradesh vs. Rujhan Studio – (2021) 18 SCC 764

Further, we also find that the department has not disputed till date that the appellant have not made the payment of Rs. 221.4 crores.

9.3 Keeping in view the above facts, we are of the opinion that on that account also, the appellant are not liable to pay service tax on additional license fee as demanded by the Revenue. Therefore, this issue is also decided in favour of the appellant.

10. In view of our discussion above, we are of the considered opinion that the impugned order is not sustainable in law, consequently, we set aside the same and allow the appeal of the appellant with consequential relief, if any, as per law.

(Order pronounced in the open court on 23.06.2025)

**(S. S. GARG)**
**MEMBER (JUDICIAL)**

**(P. ANJANI KUMAR)**
**MEMBER (TECHNICAL)**

RA_Saifi