CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI

PRINCIPAL BENCH – COURT NO. 4

Service Tax Appeal No. 50965 of 2025

(Arising out of Order-in-Appeal No. 67/2024-25 dated 28.06.2024 passed by the Commissioner (Appeals-II), Central Tax/Excise, Delhi)

M/s National Institute of Public Finance and Policy — **Appellant**
18/2, Satsang Vihar Marg,
Special Institutional Area (Near JNU),
New Delhi-110067.

Versus

Commissioner of Central Excise & CGST-Delhi South — **Respondent**
2nd & 3rd Floor, EIL Annexe Building,
Plot-2-B, Bhikaji Cama Place,
South Delhi-110066

Appearance:

Present for the Appellant: Ms. Ashna Kakar, Advocate

Present for the Respondent: Shri Kuldeep Rawat, Authorized Representative

CORAM:
Hon'ble Dr. Rachna Gupta, Member (Judicial)

Date of Hearing : 28/10/2025
Date of Decision : 10/11/2025

Final Order No. 51696/2025

Dr. Rachna Gupta:

M/s National Institute of Public Finance and Policy[1] is engaged in business of "Management or Business Consultant Service" and other taxable services. The appellant has also been receiving various other taxable services. Accordingly, were registered with the Service Tax department. During the audit of records of the

1 the appellant herein

appellant conducted on test check basis, several discrepancies were noticed by the audit team as follows:

(i) Non-payment of service tax on the income received under the various accounting heads amounting to Rs. 4,91,965/-;

(ii) Misc. income recoveries and liabilities being written off for the financial year 2016-17 and financial year 2017-18 up to June 2017;

(iii) Non-payment of service tax under Reverse Charge Mechanism :

(a) On Rent-a-cab services received from M/s Guru Harkishan Tour & Travels amounting to Rs. 91,426/-;

(b) On legal services amounting to Rs. 53,814/-

Based on these discrepancies that a demand cum show cause notice bearing No. 07/2022-24 dated 24.02.2022 was served upon the appellant.

1.1 In response to the queries raised about these discrepancies appellant filed reply dated 28.02.2022. However finding the same as insufficient compliance on part of the appellant that a show cause notice dated 28.02.2022 was served upon the appellant invoking the extended period of limitation alleging suppression of facts. The service tax amounting to Rs. 6,37,205/- was proposed to be recovered along with the interest and the appropriate penalties. The amount of Cenvat credit amounting to Rs.

7,45,819/- was proposed to be disallowed and to be recovered along with the interest and the amounts of penalties to be imposed from the appellants. The amount of Rs. 13,83,024/- as already been deposited by the appellant vide entry dated 30.03.2022 was proposed to be appropriated against the demand raised vide the audit memo dated 01.03.2022.

1.2 The said proposal was initially confirmed vide Order-in-Original bearing No. 30/2023-24 dated 18.10.2023. Appeal against the said order has been rejected vide Order-in-Appeal No. 67/2024 dated 28.06.2024 except that the demand of service tax and Cenvat credit is modified to the extent as mentioned in para 5.14 of the impugned order in appeal and the penalty under Section 78 of Finance Act has been reduced from Rs. 6,37,205/- to Rs. 1,45,240/- under Section 78 of Finance Act under Rule 15(3) of Cenvat Credit Rules, 2004. The penalty has been reduced from Rs. 7,45,819/- to Rs. 3,89,320/-. Still being aggrieved, the appellant is before this Tribunal.

2. I have heard Ms. Ashna Kakar, learned counsel for the appellant and Shri Kuldeep Rawat, learned Authorized Representative for Revenue.

3. Learned counsel for the appellant submitted that appellant is a public institute involved in extending the policy advice to various Government departments. It is submitted that they have been absolutely regular in filing their timely ST-3 returns. Learned counsel has accepted the liability of service tax of Rs. 6 lakhs demanded and confirmed along with the liability of reversing the

Cenvat credit of Rs. 7 lakhs along with proportionate interest. However, the order imposing penalty upon the appellants has been objected for want of any suppression of facts on part of the appellant.

3.1 It is submitted that the appellant could not pay service tax under Reverse Charge Mechanism purely because of the inadvertent omission. Otherwise also there is no positive evidence produced by the department to prove the allegations of suppression of facts. The governmental authority is otherwise not supposed to have an intent to evade the payment of tax. In the absence of any circumstance given under proviso to Section 73(1) of Finance Act 1994, the department is alleged to have wrongly invoked the extended period of limitation. The show cause notice is alleged to be barred by time. The proposal of such show cause notice is accordingly, prayed to be set aside. However, the tax liability and the payment of the requisite amount (as already mentioned above) has not still been disputed. With these submissions, the order of imposition of penalty upon the appellant under Section 78 of Finance Act as well as under Rule 15(3) of Service Tax Rules is prayed to be set aside. Appeal is prayed to be disposed of accordingly.

4. While rebutting these submissions, the learned Departmental Representative has mentioned that non-mention of the tax liability in the service tax return is the clear cut act of mis-statement amounting to suppression of facts. Similarly, claiming of ineligible Cenvat credit in the returns is an act of suppression of facts. The appellant did not make any reversal of the ineligible credit nor

made any payment of their service tax liability till the audit was conducted. Hence the only possible outcome is an intent with the appellant to evade the payment of tax. Learned Departmental Representative emphasized that appellant cannot be allowed to have the benefit of being the governmental authority and about them being in policy consultancy to the government that too, on financial matters. They cannot plead ignorance of law and the inadvertent omission on their part while filing the financial records before the concerned department. Learned Departmental Representative has emphasized upon the finding in para 22.11 of the impugned order. Impressing upon no infirmity in the order under challenge. The appeal is prayed to be dismissed.

5. While rebutting these submissions, appellant has mentioned that the entire amount of demand confirmed was paid by the appellant even prior issuance of the show cause notice. Based on this even show cause notice should not have been issued in the present case.

6. Having heard both the parties, the rival contentions and perusing the entire record, it is observed to be an admitted fact that the appellant was liable to pay service tax amounting to Rs. 6,37,205/-. It is also an admitted fact that the appellant was not liable to avail the Cenvat credit, the services being ineligible inputs/input services being ineligible for the purpose. In terms of the Evidence Law of the Land, admissions are the best evidence and need no further proof. The appellant herein is also not aggrieved of the payment of the amount towards the aforesaid liability. The only grievance is with respect to imposition of

penalty. In light of these circumstances I do not deem it relevant to adjudicate vis-à-vis the invocation of proviso to Section 73(1) of the Finance Act, 1994, which reads as under:

7. The narrow compass of the adjudication is the imposition of penalty under Section 78 of Finance Act, 1994 and under Rule 15(3) of Cenvat Credit Rules, 2004:

> "Provided that where any service tax has not been levied or paid or has been short-levied or erroneously refunded by reason of –
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> (a) Fraud; or
>
> (b) Collusion; or
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> (c) Willful 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,
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> 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 thirty months, the words "five years' had been substituted."
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> **'Rule 15(3)** In a case, where the Cenvat credit in respect of input or capital goods or input services has been taken or utilized wrongly by reason of fraud, collusion of any willful mis-statement or suppression of facts, or contravention of any of the provisions of these rules or of the Finance Act or of the rules made thereunder with intent to evade payment of service tax, then, the provider of output service shall also be liable to pay penalty in terms of the provisions of sub-section (1) of Section 78 of the Finance Act."

8. Perusal of both the provisions reveal that penalty under these provisions can be imposed when there has been non-payment or short payment of service tax or availment of Cenvat credit/wrong utilization thereof happens by reason of fraud, collusion, willful mis-statement or suppression of facts or contravention or any of the statutory provision. The penalty ordinarily has not to be imposed unless the party obliged either acted deliberately in defiance of law

or was guilty of conduct in contumacious or dis-honest or acted unconscious disregard of its obligation. It was clarified by Hon'ble Apex Court in the case of **Hinudstan Steel Ltd. Vs. State of Orissa**[2]. The Hon'ble Court held as follows:

> "Penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law and was guilty of conduct concamacious or dishonest or acted in conscious disregard of its obligation. The hon'ble Court further held that even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to invoke penalty when there a technical or venial breach of the provisions of the Act or where the breach flows from the bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Thus, on the same analogy, the party are not liable for any penal action and so the penal proceedings initiated in the show cause notice merits to be dropped."

9. In the present case, the appellant has mentioned that the non-payment of service tax and wrong availment Cenvat credit Act was an inadvertent omission. It is also apparent fact on record that the moment this discrepancy was brought to the notice of the appellant, the appellant deposited the entire amount with interest. Above all, the appellant is a governmental authority. In these circumstances, the grave consequence as that of penalty specially when there is nothing on record produced by the department to prove that the non-payment or wrong availment was a deliberate default instead of being an advertent admission, the order imposing penalty under both the provisions is contrary to the statutory intent.

9.1 Though the learned Departmental Representative has emphasized that non-declaration in the service tax returns amounts to suppression of facts as mentioned in proviso to Section 73(1) of

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2 1998 (2) ELT J159 (SC)

Finance Act and the penalty has righty been imposed. But the meaning of this word "suppression of facts" in normal understanding is not different from what has explained in various dictionaries. Unless, of course, the context, in which it has been used indicates otherwise. I draw my support from the decision of hon'ble Apex Court in the case of **Continental Foundation Vs. CCE**[3] wherein it is held as follows:

> "A perusal of proviso indicates that it has been used in company of such strong words as fraud, collusion or willful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has been 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 the payment of duty where facts are known to both parties, the omission by one to do what he might have done and no that he must have done, does not render it suppression."

10. In view of the entire above discussion and in absence of any evidence of positive act of suppression on part of the appellant, I hereby set aside the order imposing penalty on the appellant under Section 78 of Finance Act 1994 as well as under Section 15(3) of Cenvat Credit Rules, 2004. With these observations, the order under challenge stands modified to the extent as indicated above. The appeal stands disposed of accordingly.

(Pronounced in open Court on 10.11.2025)

(Dr. Rachna Gupta)
Member (Judicial)

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3 2017 (216) ELT 177 (SC)