

## Data appearing on the income tax portal cannot be a basis for levying a penalty due to fraud or suppression under the service tax law – CESTAT

16 September 2022



## Summary

The Kolkata Bench of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) has held that the data appearing on the income tax (IT) portal cannot be a basis for levying a penalty on the account of fraud or suppression under the service tax law. It observed that the Revenue had confirmed the demand of service tax along with interest and penalty based on the higher value of taxable services as appearing on the IT portal and the profit loss account. However, no dispute in this regard was raised by the Revenue at the time of audit for the relevant year. Therefore, the CESTAT opined that since the records have been duly audited by the Revenue, the demand cannot be raised for the same period on account of change in the opinion. Further, the CESTAT stated that the Revenue could not find or prove any ingredient of fraud or suppression with an intent to evade payment of tax on the part of the appellant. Therefore, the CESTAT set aside the impugned demand of service tax, interest, and penalty against the appellant.

## Facts of the case

- The appellant<sup>1</sup> was registered under the category of Clearing and Forwarding Agents (C & F Agents) under the service tax law.
- A show cause notice (SCN) was issued to the appellant based on the comparison made between the data available on the IT portal and the service tax returns filed by the appellant and the data appearing in the profit and loss account of the appellant.
- The appellant submitted that no dispute was raised in this regard at the time of the audit conducted for FY 2013-14 by the Revenue. Further, the appellant submitted that service tax registration has been surrendered since they had ceased to provide any taxable service.
- The appellant also submitted that the demand was raised primarily on trading operations on which applicable VAT has been paid and the Revenue has confirmed the demand without appreciating the fact that income appearing on the IT portal and profit and loss account also includes the trading transactions.
- The appellant also submitted that a reconciliation statement duly supported by a CA certificate has also been submitted and demand for FY 2014-15 is completely barred by limitation since there is no element of fraud or suppression.
- Aggrieved by the impugned order, the appellant filed an appeal<sup>2</sup> before the CESTAT.

## Kolkata CESTAT observations and ruling<sup>3</sup>:

- **Demand cannot be raised for same period on change of opinion:** The CESTAT observed that the Revenue had not raised any dispute in this regard during the time of audit. Therefore, as the records of the

<sup>1</sup> M/s Balajee Machinery

<sup>2</sup> Service Tax Appeal No. 77214 of 2019

<sup>3</sup> vide order dated 16 August 2022

appellant have been duly audited by the authorities, the demand cannot be raised for the same period on account of change in the opinion.

- **Demand cannot be raised merely based on Income tax data:** The CESTAT stated that where the demand is merely based on the data appearing on the IT portal, there cannot be said to be any fraud or suppression to justify the invocation of an extended period of limitation.
- **Limitation period cannot be invoked:** The CESTAT further stated that no ingredient of fraud or suppression with an intent to evade payment of tax has been found in the present case. Therefore, the demand for the period up to March 2015 is time-barred.
- **Demand set aside:** Therefore, the CESTAT allowed appeal and set aside the demand of service tax, interest, and penalty.

## Our comments

In the case of Pappu Crane Services, the Allahabad Bench of the CESTAT had held that where the demand is merely based on the data appearing in the IT portal, there cannot be said to be any fraud or suppression to justify invocation of the extended period of limitation.

Further, in the case of M/s Numal Saikia, the Kolkata Bench of the CESTAT had held that the onus to prove that the appellant is liable to pay service tax is on the department and it is a settled principle of law that unless and until the clear analysis of the activity done by the assessee is carried out, the demand of service tax cannot be confirmed.

The present ruling is in line with the above rulings and reiterates that the authorities cannot raise demand against the taxpayers based on the data appearing on the IT portal without proving any default on the part of the taxpayers. This is a welcome judgment and an analogy can also be drawn under the GST regime in similar matters.

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