

**CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

SERVICE TAX APPEAL No.85287 OF 2024

(Arising out of Order-in-Appeal No.SK/CGST-A-I/MUM/267/23-24 dated 30.10.2023 passed by the Commissioner of CGST and CE ,(Appeals), Mumbai)

SAROSH HOMI FORBES

117A, Dariya Mahal, 80 Napean Sea Road,
Mumbai
Maharashtra-400 006

Appellant

Vs.

**COMMISSIONER OF CENTRAL GOODS AND
SERVICE TAX-MUMBAI SOUTH**

13th Floor, Air India Building, Nariman Point,
Mumbai,
Maharashtra-400 021

Respondent

Appearance:

Present for the Appellant: Shri Sushasnt Murthi, Advocate
Present for the Respondent: Shri A.P. Singh, AR

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. 85324/2025

Date of Hearing: 24.10.2024
Date of Decision: 13.03.2025

PER: AJAY SHARMA

This appeal has been filed by the appellant challenging the impugned Order-in-Appeal dated 30.10.2023 passed by the Commissioner(Appeals), CGST & C.EX. Mumbai by which the learned Commissioner rejected the appeal filed by the appellant while confirming the Order-in-Original dated 23.1.2023.

2. The appellant is a Psychoanalyst, Psychotherapist and a Mental Healthcare professional and is providing related healthcare services. The appellant is also assisting doctors and psychiatrists in

providing mental healthcare to their patients including patients in emergency situation/ serious crisis situation. The entire case of Revenue is based upon the Income Tax Returns filed by the appellant with the Income Tax Department. On examination of the data provided by the Income Tax Department it was found by revenue that although the appellant has declared his income under direct tax but since the same was not covered under the negative list of services inserted in the Finance Act, 1994 vide Section 66D ibid w.e.f. 1.7.2012 as per notification no. 19/2012-ST, dated 5.6.2012, it was liable for service tax and despite that no service tax was paid by the appellant. As per revenue the appellant is providing taxable service but not obtained any service tax registration and accordingly best judgment method was applied for raising demand for the period October, 2014 to June, 2017. After invocation of extended period, a show cause notice to that effect was issued to the Appellant on 30.12.2020 demanding service tax amount of Rs.16,59,494/- alongwith interest and penalties under various provisions of Finance Act, 1994 which culminated in the Adjudication Order i.e. Order-in-Original dated 23.1.2023 confirming the demand of Rs.10,47,270/- after scrutinizing the documents submitted by the appellant, alongwith interest and penalties. On appeal filed by the appellant, the same was dismissed by the 1st appellate authority by way of impugned order.

3. Learned counsel for the appellant submits that the demand has been raised on the basis of best judgment u/s. 72 ibid as per the figures mentioned in the income-tax returns for the FY 2015-16 under the Income Tax Act, 1961. According to learned counsel, income-tax returns cannot be made the basis for raising demand

that too after invoking the extended period. He also submits that mere failure to obtain the registration or non-filing of returns under the Finance Act, 1994 does not *ipso facto* amounts to suppression without establishing any positive act or mala fide with intention to evade service tax. Per contra learned Authorised Representative appearing on behalf of revenue supported the findings recorded in the impugned order and prayed for dismissal of appeal.

4. I have heard learned counsel for the appellant and learned authorised representative on behalf of revenue and perused the case records including the synopsis/decisions placed on record. Admittedly the entire case of the department is based on the third-party data received from the Income Tax Department for the F.Y. 2015-16 after which on the basis of best judgment the entire demand was calculated and show cause notice was issued after invoking the extended period of limitation. It is also admitted fact that the aforesaid show cause notice has been issued just one day before being barred by limitation. The same has been issued on 30.12.2020 because after 31.12.2020 the same would have been hit by limitation (*or rather 'larger period of limitation'*) therefore while arriving at any conclusion I have to keep this fact also in mind. From the records it is not coming out whether before issuing the show cause notice any independent enquiry had been conducted by the department to ascertain the receipt of amount in issue towards rendering any taxable service. In the absence of any specific allegation about the nature of service provided or the service recipient, it is not justified to held appellant liable for service tax. In order to fasten any duty liability on the appellant the department, in the first place, has to identify the nature of

taxable service and the recipient of such service as well. Section 72 ibid cannot be applied merely on the basis of income-tax return without identifying the specific taxable service and the service recipients. By way of various decisions, it is settled legal position that a show cause notice issued on the basis of presumption and third-party information without examining the books of account and records of an assessee is not sustainable. Reference can be made to the decisions of the Hon'ble Supreme Court in the matter of *Oudh Sugar Mills vs. UOI; 1978(2) ELT (J172) (S.C.)* and also of the co-ordinate bench of the Tribunal in the matter of *Sharma Fabricators & Erectors Pvt. Ltd. vs. Commissioner.; 2017(5) GSTL 96 (Tri.-All.)*, later on confirmed by the Hon'ble High Court of Judicature at Allahabad by dismissing the appeal of the department against the said order as reported in *2019 (22) G.S.T.L. 1166 (All.); Commissioner vs. Sharma Fabricators & Erectors Pvt. Ltd.* Therefore in the present case also, the demand cannot sustain.

5. It is not borne out from the case records that the appellant had actually charged service tax from its customers nor it is the case of the department. The appellant was under the bonafide belief that he is not liable for service tax and therefore neither he applied for service tax registration nor filed the service tax returns. The appellant had shown the entire amount received in his income-tax return and the tax liability under direct tax was duly discharged by the appellant. These facts establish that there was no malafide intention on the part of the appellant to evade payment of service tax. Information derived from the income-tax returns solely cannot be made the basis to confirm the demand of service tax herein by invoking the extended period of limitation as the

department has failed to bring on record any positive act or malafide intention on the part of the appellant to evade the service tax. Therefore I am of the view that the demand cannot sustain on the ground of extended period of limitation also. Before parting with the order, I am making it clear I have not gone into the issue whether the service rendered by the appellant is classifiable as *paramedic* or not and liable for service tax? The same has been kept open to be decided in appropriate proceedings.

6. In view of the discussions made hereinabove, the appeal filed by the appellant is allowed by setting aside the demand. The impugned order is accordingly set aside.

(Pronounced in the court on 13.03.2025)

(AJAY SHARMA)
MEMBER (JUDICIAL)

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