



Foreknowledge of the tax liability – an important factor in determining the applicability of the penalty

Background

Appeal filed by N & N Chopra Consultants Pvt. Ltd¹ (the appellant) on the simultaneous levy of penalties under Section 76 and Section 78 was dismissed by the High Court of Delhi.

The Court observed that foreknowledge of the tax liability is an important factor that ought to have been considered and has been considered by the revenue authorities while determining the penalty liability.

Deposit of tax liability before issuance of the show cause notice does not absolve the appellant of its responsibilities.

Facts of the cases

- Appellant was engaged in providing commercial coaching and training services. For the period 9-Sep-2004 to 31-Mar-2008, the appellant had filled its service tax returns declaring no service tax liability.
- Income Tax search and seizure proceedings apparently triggered investigations by the service tax authorities. By virtue of the investigation, the appellant offered to pay service tax dues. Subsequently, after payment of the service tax dues, show cause notice (SCN) was issued by the adjudicating officer and thereafter the matter was adjudicated and the order was passed accordingly. The order also confirmed the levy of penalty under 76 and 78 of the Finance Act, 1994.
- The appellant preferred an appeal before the tribunal on the levy of penalty. The said appeal was rejected and accordingly, the levy of penalty was upheld.

- Aggrieved, the appellant filed an appeal before the High Court of Delhi. It was contended in the appeal that, before the SCN was issued the appellant had paid tax demand towards service tax liability and thus the demand for a penalty under section 76 was unjustified.

High Court observation and decision

Reviewing the facts of the case the High Court dismissed the appeal and made the following observations:

- The appellant was aware of the service tax liability, despite it filed its service tax return with no liability.
- Upon the search and seizure proceedings initiated by the Income-tax department, the appellant approached the service tax department and deposited the tax liability.
- Foreknowledge of the tax liability is an important factor that ought to have been considered and has been considered by the revenue authorities while determining the penalty liability.
- Foreknowledge leads to the imposition of recovery dues assessed as well as the imposition of the penalty under Section 78.
- Depositing the tax due, before issuance of SCN does not absolve the appellant of its responsibilities.

Our comments

The court has not just considered past judgments but also the intention of the parties before confirming the penalty.

Thus wherever any tax is not paid intentionally, then the penalty may be applicable even if the tax is deposited before the issue of SCN.

¹ N & N Chopra Consultants Pvt. Ltd v. PCIT (SERTA 20/2018, C.M. APPL. No. 29038-29039/2018, dated 24 July 2018)

www.kpmg.com/in

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House,
Corporate Road,
Pralhad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Maruthi Info-Tech Centre,
11-12/1, Inner Ring Road,
Koramangala,
Bengaluru – 560 071.
Tel: +91 80 3980 6000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers,
Ground Floor, 1, 2 & 3 Floor,
Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2,
Serilingampally Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road
Jaipur – 302 018.
Tel: +91 141 – 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytilla, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

1st Floor, Lodha Excelus,
Apollo Mills,
N. M. Joshi Marg,
Mahalaxmi, Mumbai – 400 011.
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus,
36/3-B, Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

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