2025 INSC 841

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3816-3817 OF 2025

M/S. STEMCYTE INDIA THERAPEUTICS PVT. LTD. ... APPELLANT

VERSUS

COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, AHMEDABAD - III ... RESPONDENT

J U D G M E N T

R. MAHADEVAN, J.

1. These appeals have been preferred by the appellant / assessee challenging the common Final Order dated 02.08.2024 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Ahmedabad[1], in Service Tax Appeal Nos. 12168/2018 and 11738/2016. By the impugned order, the CESTAT rejected the appeals filed by the appellant and upheld the orders passed by the lower authorities. In doing so, it held that the services of enrolment, collection, processing, and storage of umbilical cord blood stem cells, provided by the appellant during the period from 01.07.2012 to 16.02.2014, do not fall within the scope of "Healthcare Services".

[1] For short, "CESTAT"

Consequently, the appellant was held liable to pay service tax on the said services along with interest and penalties.

2. The basic facts of the case, as projected by the appellant, are as follows:

2.1. The appellant is a joint venture company of M/s. Stemcyte Inc., USA, M/s. Apollo Hospital Enterprises Ltd., and M/s. Cadila Pharmaceuticals Ltd., established in 2008. It is engaged in the collection, processing, testing, and storage of umbilical cord blood units and their therapeutic application. The appellant is a member of the Association of Stem Cell Banks of India.

2.2. On 27.12.2011, the Ministry of Health and Family Welfare, Government of India, issued notification No. GSR 899(E) notifying the Drugs and Cosmetics (3rd Amendment) Rules, 2011. Under these rules, cord blood banks were required to obtain registration. Part XII-D of the Rules set out detailed requirements relating to the collection, processing, testing, and release of umbilical cord blood-derived stem cells.

2.3. Subsequently, the Ministry of Finance, Government of India, issued Notification No.25/2012–Service Tax dated 20.06.2012, which provided a consolidated list of services exempt from service tax. Under Serial No.2 of the said notification, “Healthcare Services” were exempted. This notification superseded the earlier Notification No. 12/2012–Service Tax dated 17.03.2012.

Accordingly, with effect from 01.07.2012, the negative list regime of service tax was introduced, rendering all services taxable unless specifically included in the in the negative list or expressly exempted otherwise.

2.4. On 21.09.2012, the Association of Stem Cell Banks of India submitted a representation to the Ministry of Health and Family Welfare, Government of India, seeking clarification on whether the services rendered by stem cell banks qualified as "Healthcare Services". In response, the Ministry, after consultation with the National AIDS Control Organization, issued an Office Memorandum dated 22.05.2013, clarifying that the services rendered by stem cell banks are part of "Healthcare Services" and may be considered for exemption from service tax.

2.5. On 24.10.2013, the appellant obtained Service Tax Registration No. AALCS7174BSD001 under the category "healthcare services by clinical establishment, health check-up / diagnosis, etc." from the Central Board of Excise and Customs.

2.6. Subsequently, the Deputy Commissioner of Central Excise, Ahmedabad-III, issued a letter dated 02.12.2013 to the appellant requiring them to submit documents relating to the services provided by it. The appellant submitted the requested documents on 30.12.2013.

2.7. Thereafter, a search was conducted at the appellant's premises on 06.01.2014, during which, statements were recorded and a panchnama was drawn.

2.8. In the meanwhile, the Ministry of Finance issued Notification No. 4/2014-ST dated 17.02.2014, inserting Entry 2A, which exempted from service tax the services provided by cord blood banks by way of preservation of stem cells or any other services in relation to such preservation.

2.9. Subsequently, the Commissioner issued summons and letters to the appellant demanding service tax for the period from 01.07.2012 to 16.02.2014. In response, the appellant submitted replies along with the necessary documents and deposited a sum of Rs. 40,00,000/-, stating that the payment was made under protest, as the services provided by it, were exempt under Notification No.25/2012-ST dated 20.06.2012 under the heading "Healthcare Services".

2.10. On 26.03.2015, the appellant filed an application seeking refund of the deposited amount of Rs.40,00,000/-. However, by communication dated 27.03.2015, the Superintendent of Central Excise, Ahmedabad-III, refused to refund the said amount.

2.11. Thereafter, the Commissioner issued a show cause notice dated 08.04.2015 calling upon the appellant to show cause why their refund claim should not be rejected under Section 11B of the Central Excise Act, 1944. The appellant filed a written reply, but the Commissioner passed Order-in-Original No. 108/Ref/ST/DC/2015-16 dated 31.08.2015, rejecting the refund claim on the ground that the investigation was still pending. The Commissioner (Appeals) also dismissed the appellant's appeal by Order-in-Appeal dated

28.07.2016. Aggrieved, the appellant preferred a further appeal before the CESTAT under Section 86(1) of the Finance Act, 1994.

2.12. During the pendency of the aforesaid appeal, the Commissioner, CGST & Central Excise, Gandhinagar issued a show cause notice dated 28.07.2017 demanding service tax of Rs. 2,07,29,576/- along with interest for services rendered between 01.07.2012 and 16.02.2014, and also proposed imposition of penalties under sections 77(1)(a), 77(1)(d), 77(2) and 78 of the Finance Act, 1994. The appellant filed a detailed reply.

2.13. Meanwhile, the Ministry of Health and Family Welfare issued Notification No. GSR 334(E), notifying the Drugs and Cosmetics (Amendment) Rules, 2018, wherein, stem cell and cell-based products were classified as 'Drugs'. The appellant submitted an additional reply to the show cause notice, on 04.05.2018. Thereafter, the Commissioner passed Order-in-Original dated 18.05.2018, confirming the demand and penalties. Aggrieved, the appellant filed a statutory appeal before the CESTAT.

2.14. By a common order dated 02.08.2024, the CESTAT dismissed both the appeals filed by the appellant and upheld the Orders-in-Original. The appellant is therefore before this Court by way of the present appeal.

3. The learned senior counsel for the appellant submitted that the CESTAT failed to properly consider the various documents, expert opinions, and submissions placed on record. These included the Office Memorandum

No.X.11035/41/2012-DFQC (Pt.) dated 22.05.2013 issued by the Ministry of Health and Family Welfare, Government of India, clarifying that the services rendered by the appellant – relating to enrolment, collection, processing, and storage of umbilical cord blood stem cells – fall within the ambit of "Healthcare Services", and are thus exempt under Serial No.2 of Notification No. 25/2012-ST dated 20.06.2012. It was further contended that the subsequent insertion of Entry 2A by Notification No.4/2014-ST dated 17.02.2014 was merely clarificatory in nature and did not imply that the services were not covered earlier under Entry 2.

3.1. It was submitted that the exemption under Entry 2 is broad and does not distinguish between types of illnesses based on their frequency or severity. The CESTAT erred in narrowly interpreting the term "Healthcare Services" holding that although stem cells stored and supplied by the appellant are used for treatment of grave illnesses, these would not qualify as health care services as they are not used for treatment of regular illnesses.

3.2. It was argued that "Healthcare Services" have always been exempt under the Finance Act, 1994 and that such exemption continued under the negative list regime from 01.07.2012. Referring to Clause 2(t) of Notification No.25/2012-ST, the learned senior counsel submitted that the expression "any service" used therein must be interpreted liberally, covering services for diagnosis, treatment, or care of illness, injury, deformity, abnormality, or pregnancy. Judicial

precedents including *K.P. Mohammed Salim v. Commissioner of Income-tax*[2], *and Lucknow Development Authority v. M.K. Gupta*[3], were relied upon to demonstrate that the word "any" has wide import and must be read expansively.

3.3. It was further submitted that the CESTAT failed to appreciate the beneficial nature of the exemption under Notification No. 25/2012-ST. Such exemptions, being in furtherance of public health, must be interpreted liberally in favour of the assessee. The later insertion of Entry 2A could not curtail the scope of Entry 2, as both pertain to the same class of services.

3.4. The learned senior counsel further argued that the CESTAT's finding – that the appellant's services are not part of any recognized system of medicine – is perverse and unsupported by evidence. This finding merely reiterated the reasoning of the Order-in-Original dated 18.05.2018 without independently evaluating the appellant's submissions.

3.5. It was pointed out that the appellant's services are regulated under the Drugs and Cosmetics Act and the 2011 Third Amendment Rules. Part XII D of these Rules prescribes conditions for registration and regulation of stem cell banks. Furthermore, Notification No. 213 dated 04.04.2018 classifies stem cell-based products as "drugs", thereby placing the services within a recognized statutory framework. The appellant, having obtained all necessary registrations and certifications, acted under a *bona fide* belief that their services were exempt.

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[2] 2008 (11) SCC 573
[3] (1994) 1 SCC 243

3.6. The learned senior counsel further contended that the extended period of limitation invoked by the department was impermissible. The demand raised after more than three years from the conclusion of the investigation is barred by limitation. In the absence of suppression, misstatement, or intent to evade, the invocation of the extended limitation period was unjustified.

3.7. It was also submitted that the penalties imposed under Section 78 were unwarranted. Given the appellant's reasonable and bona fide belief regarding exemption, their conduct falls within the protective ambit of section 80 of the Finance Act, 1994.

3.8. In support of the submissions, the learned senior counsel placed reliance on a compilation of judgments of this Court.

3.9. Accordingly, it was submitted that the appellant is not liable to pay service tax, interest, or penalties for the disputed period and hence, the impugned order is liable to be set aside.

4. On the contrary, the learned Additional Solicitor General appearing for the respondent submitted that there existed an element of mutual trust and confidence between the department and the appellant regarding compliance with service tax provisions. Based on such mutual trust, the appellant was required to maintain statutory records under the Service Tax Rules. However, the appellant breached this trust and contravened Section 68 of the Finance Act,

1994, read with Rule 6 of the Service Tax Rules, 1994, by failing to pay service tax for the relevant period.

4.1. It was further argued that the services provided by the appellant cannot be classified as falling within the ambit of "Healthcare Services by clinical establishments". Therefore, as per clause 2(t) of Notification No. 25/2012-ST, the activities of enrolment, collection, processing, and storage of umbilical cord blood stem cells are not covered under the said notification for exemption.

4.2. It was also submitted that the exemption for the appellant's services was specifically introduced only by Notification No. 4/2014-ST dated 17.02.2014 through insertion of Entry 2A. Hence, during the period from 01.07.2012 to 16.02.2014, the appellant's services were neither covered under the Negative List nor exempted by Notification No. 25/2012-ST and they are chargeable to service tax.

4.3. The learned counsel further submitted that the appellant had failed to obtain proper service tax registration for the said services and also failed to declare and assess the correct value of taxable services. Consequently, the appellant was rightly held liable to pay penalties under Sections 77(1)(a), 77(1)(d), 77(2) and 78 of the Finance Act, 1994.

4.4. Accordingly, the learned counsel submitted that the impugned order calls for no interference and that the present appeal deserves to be dismissed.

5. We have considered the rival submissions and carefully perused the materials placed on record.

6. Admittedly, the appellant is engaged in the business of stem cell banking services, and has been issued a registration certificate under the category of "Healthcare Services by clinical establishments" as per the provisions of the Finance Act, 1994. As per Entry 2 of Notification No.25/2012-ST dated 20.06.2012, services provided by clinical establishments in the nature of health care were exempt from service tax. Subsequently, Notification No.4/2014-ST dated 17.02.2014 introduced Entry 2A, specifically exempting services provided by cord blood banks for the preservation of stem cells or related services. During investigation, the appellant deposited a sum of Rs.40,00,000/- with the department under protest. Observing that the activity of enrolment, collection, processing and storage of umbilical cord blood stem cells performed by the appellant is a taxable service during the period from 01.07.2012 to 16.02.2014, show cause notice dated 28.07.2017 came to be issued to the appellant, and the same culminated in Order-in-Original dated 18.05.2018, the operative portion of which reads as follows:

> *"(i) I confirm the demand of Service Tax amounting to Rs.2,07,29,576/- (Rupees Two crore seven lakhs Twenty-nine thousand five hundred and seventy-Six only) not paid by them, during the period from 01.07.2012 to 16.02.2014 on activity of enrollment, collection, processing and storage of Umbilical Cord Blood Stem Cells ...*
> *(ii) as of Section 73(2) of the Finance Act, 1994 by invoking the extended, and order it to be recovered from them. Since an amount of Rs.40,00,000/- (Rupees Forty Lakhs only) has already been deposited by them, I order it to be*

appropriated towards the above Service Tax liability payable by them against the said demand;
(iii) I order to recover interest at appropriate rate, on the Service Tax amounting to Rs.2,07,29,576/- (Rupees Two crore seven lakhs twenty-nine thousand five hundred and seventy-six only) from them under Section 75 of the Finance Act, 1994, as amended from time to time.
(iv) I impose penalty of Rs.10,000/- (Rupees Ten thousand only) upon them under Section 77(1)(a) of the Finance Act, 1994 for their failure to obtain service tax registration for the said service within the stipulated time frame;
(v) I impose penalty of Rs.10,000/- (Rupees Ten thousand only) upon them under Section 77(l)(d) of the Finance Act, 1994 for their failure to pay service tax through internet banking;
(vi) I impose penalty of Rs.10,000/- (Rupees Ten Thousand Only) upon them under Section 77(2) of the Finance Act, 1994 for their failure to assess their service tax liability & failure to file prescribed returns in Form ST-3 within stipulated time frame for the said service under Section 70 of the Finance Act, 1994;
(vii) I impose penalty of Rs.1,03,64,788/- (Rupees One Crore Three Lakhs Sixty Four Thousand Seven Hundred and Eighty Eight Only) (Fifty percent of the service tax demanded) upon them under Section 78 of the Finance Act, 1994 for non-payment of service tax on account of misstatement / suppression of facts and contravention of provisions of the Finance Act, 1994 and Service Tax Rules, 1994 with intent to evade payment of Service Tax."

The CESTAT confirmed the demand of service tax, interest and penalties imposed, and the rejection of refund claim made by the appellant, by the order impugned herein.

7. Now, the primary dispute involved herein, relates to the period between 01.07.2012 and 16.02.2014 and whether the appellant's services during this period fell within the ambit of "Healthcare Services" and are therefore, eligible for exemption from payment of service tax.

8. The contentions raised by the appellant can be summarised under two broad grounds: first, that the show cause notice is barred by limitation; and second, that the services rendered by it fall within the ambit of "Healthcare Services".

9. In the present case, the disputed period is from 01.07.2012 to 16.02.2014. However, the show cause notice was issued only on 28.07.2017, demanding a sum of Rs.2,07,29,576/- towards service tax, by invoking the extended period of limitation. Under section 73(1) of the Finance Act, 1994, a show cause notice must ordinarily be issued within one year from the relevant date. The proviso to section 73(1) allows an extended period of up to five years only where the non-payment or short payment of service tax is due to fraud, collusion, wilful misstatement, suppression of facts, or contravention of the provisions of the Act or Rules, with an intent to evade payment of service tax.

9.1. It is evident from the communication dated 02.12.2013 issued by the Deputy Commissioner of Central Excise, Ahmedabad-III, directing the appellant to furnish the documents relating to their activities, that the department was already aware of the nature of the appellant's operations as early as in 2013. Despite such awareness, the department issued the show cause notice after an inordinate delay, well beyond the ordinary period of limitation, and sought to justify it by invoking the extended period.

9.2. There is no dispute that the services rendered by the appellant were not exempt from service tax until Notification No. 25/2012-ST dated 20.06.2012 was issued. The records reveal that the appellant was under a *bona fide* belief that the activity of enrolment, collection, processing, and storage of umbilical cord blood stem cells fell within the scope of exempted "Healthcare Services" and therefore, was not liable to service tax. There is nothing on record to suggest that the appellant suppressed any material facts. On the contrary, they responded promptly to departmental communications and even deposited a sum of Rs. 40,00,000/- during the investigation. There was no allegation or evidence of fraud, collusion, wilful misstatement, or contravention of statutory provisions with intent to evade tax.

9.3. It is a settled principle of law that, for the department to invoke the extended period of limitation, there must be an active and deliberate act on the part of the assessee to evade payment of tax. Mere non-payment of tax, without any element of intent or suppression, is not sufficient to attract the extended limitation period. In this regard, reference may be made to the following judgments:

(i) Padmini Products v. CCE[4]

> *"12. Shri V. Lakshmi Kumaran, learned counsel for the appellant drew our attention to the observations of this Court in CCE v. Chemphar Drugs and Liniments, Hyderabad [(1989) 2 SCC 127 : 1989 SCC (Tax) 245] where at p. 131 of the report, this Court observed that in order to sustain an order of the Tribunal beyond a period of six months and up to a period of five years in view of the proviso to sub-section (1) of Section 11-A of the Act, it had to be*

[4] (1989) 4 SCC 275

established that the duty of excise had not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. It was observed by this Court that something positive other than mere inaction or failure on the part of the manufacturer or producer of conscious or deliberate withholding of information when the manufacturer knew otherwise, is required to be established before it is saddled with any liability beyond the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. The Tribunal, however, had held contrary to the contention of the appellant. The Tribunal noted that dhoop sticks are different products from agarbatis even though they belonged to the same category and the Tribunal was of the view that these were to be treated differently. Therefore, the clarification given in the context of the agarbatis could not be applicable to dhoop sticks etc. and the Tribunal came to the conclusion that inasmuch as the appellant had manufactured the goods without informing the central excise authorities and had been removing these without payment of duty, these would have to be taken to attract the mischief of the provisions of Rule 9(2) and the longer period of limitation was available. But the Tribunal reduced the penalty. Counsel for the appellant contended before us that in view of the trade notices which were referred to by the Tribunal, there is scope for believing that agarbatis were entitled to exemption and if that is so, then there is enough scope for believing that there was no need of taking out a licence under Rule 174 of the said Rules and also that there was no need of paying duty at the time of removal of dhoop sticks, etc. Counsel further submitted that in any event apart from the fact that no licence had been taken and for which no licence was required because the whole duty was exempt in view of Notification No.111 of 1978, referred to hereinbefore, and in view of the fact that there was scope for believing that it was exempt under Schedule annexed to the first notification i.e. No.55 of 1975, being handicrafts, the appellant could not be held to be guilty of the fact that excise duty had not been paid or short-levied or short-paid or erroneously refunded because of either any fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder. These ingredients postulate a positive act. Failure to pay duty or take out a licence is not necessarily due to fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act. Suppression of facts is not failure to disclose the legal consequences of a certain provision. Shri Ganguly, appearing for the Revenue, contended before us that the appellant should have taken out a licence under Rule 174 of the said Rules because all the goods were not handicrafts and as such were not exempted under Notification No. 55 of 1975 and therefore, the appellant were obliged to take out a licence. The failure

to take out the licence and thereafter to take the goods out of the factory gate without payment of duty was itself sufficient, according to Shri Ganguly, to infer that the appellant came within the mischief of Section 11-A of the Act. We are unable to accept this position canvassed on behalf of the Revenue. As mentioned hereinbefore, mere failure or negligence on the part of the producer or manufacturer either not to take out a licence in case where there was scope for doubt as to whether licence was required to be taken out or where there was scope for doubt whether goods were dutiable or not, would not attract Section 11-A of the Act. In the facts and circumstances of this case, there were materials, as indicated to suggest that there was scope for confusion and the appellant believing that the goods came within the purview of the concept of handicrafts and as such were exempt. If there was scope for such a belief or opinion, then failure either to take out a licence or to pay duty on that behalf, when there was no contrary evidence that the producer or the manufacturer knew these were excisable or required to be licensed, would not attract the penal provisions of Section 11-A of the Act. If the facts are otherwise, then the position would be different. It is true that the Tribunal has come to a conclusion that there was failure in terms of Section 11-A of the Act. Section 35-L of the Act, inter alia, provides that an appeal shall lie to this Court from any order passed by the appellate tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purpose of assessment. Therefore, in this appeal, we have to examine the correctness of the decision of the Tribunal. For the reasons indicated above, the Tribunal was in error in applying the provisions of Section 11-A of the Act. There were no materials from which it could be inferred or established that the duty of excise had not been levied or paid or short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any wilful misstatement or suppression of facts, or contravention of any of the provisions of the Act or of the Rules made thereunder. The Tribunal in the appellate order has, however, reduced the penalty to Rs 5000 and had also upheld the order of the confiscation of the goods. In view of the fact that the claim of the Revenue is not sustainable beyond a period of six months on the ground that these dhoop sticks, etc. were not handicrafts entitled to exemption, we set aside the order of the Tribunal and remand the matter to the Tribunal to modify the demand by confining it to the period of six months prior to issue of show-cause notice and pass consequential orders in the appeal on the question of penalty and confiscation. The appeal is allowed to the extent indicated above and the matter is, therefore, remanded to the Tribunal with the aforesaid directions. This appeal is disposed of accordingly."

(ii) CCE v. Chemphar Drugs and Liniments[5]

> *"7. The respondent filed an appeal before the Tribunal. The Tribunal considered the matter and noted that the appellant's case was that the demand for duty for the period beyond six months was time-barred; and the respondent's case was that the demand for the period beyond 6 months from the receipt of show-cause notice, was time-barred inasmuch as there was no suppression or misstatement of facts by the appellant with a view to evade payment of duty. In support of its claim the respondent produced classification list approved by the authorities during the period 1978-79, and also produced extracts from the survey register showing that the officers had been visiting its factory from time to time and also taking note of the previous goods manufactured by the respondent. The plea of the Revenue was that there was suppression and/or mis-declaration and/or wrong information furnished in the declaration itself. The Tribunal noted the facts as follows:*
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> *"We observe it is not denied by the Revenue that the appellants had been submitting their classification lists from time to time showing the various products manufactured by them including those falling under T.I. 14-E and 68 also these containing alcohol. The officers who visited the factory as seen from the survey register at the factory also took note of the various products being manufactured by the appellants. It cannot be said that the appellants had held back any information in regard to the range and the nature of the goods manufactured by them. The appellants have maintained that the value of the exempted goods under T.I. 68 and also value of medicines containing alcohol, according to their interpretation, were not required to be included for the purpose of reckoning of the total excisable goods cleared by them. There is nothing on record to show that the appellants non-bona fidely held back information about the total value of the goods cleared by them with a view to evade payment of duty. Their explanation that it was only on the basis of their interpretation that the value of the exempted goods were not required to be included that they did not include the value of the exempted goods which they manufactured at the relevant time and falling under T.I. 68 is acceptable in the facts of that case. The departmental authorities were in full knowledge of the facts about manufacture of all the goods manufactured by them when the declaration was filed by the appellants. That they did not include the value of the product other than those falling under T.I. 14-E manufactured by the appellants has to be taken to be within the knowledge of the authorities. They could have taken corrective action in time. We therefore find there was no warrant in invoking longer time-limit beyond six months available for raising the demand. So far as the demand for the period within six months reckoned from the date of receipt of the show-cause notice is concerned, we observe that the appellants' case is that value of the goods under T.I. 68 was not required to be included but*

[5] (1989) 2 SCC 127

the Revenue's plea is that only value of the specified goods under Notifications Nos. 71/78 and 80/80 was not required to be excluded."

8. On the aforesaid view the Tribunal came to the conclusion that the demand raised on this for a period beyond 6 months was not maintainable.

9. Aggrieved thereby, the Revenue has come up in appeal to this Court. In our opinion, the order of the Tribunal must be sustained. In order to make the demand for duty sustainable beyond a period of six months and up to a period of 5 years in view of the proviso to sub-section (1) of Section 11-A of the Act, it has to be established that the duty of excise has not been levied or paid or short-levied or short-paid, or erroneously refunded by reasons of either fraud or collusion or wilful misstatement or suppression of facts or contravention of any provision of the Act or Rules made thereunder, with intent to evade payment of duty. Something positive other than mere inaction or failure on the part of the manufacturer or producer or conscious or deliberate withholding of information when the manufacturer knew otherwise, is required before it is saddled with any liability, before (sic beyond) the period of six months. Whether in a particular set of facts and circumstances there was any fraud or collusion or wilful misstatement or suppression or contravention of any provision of any Act, is a question of fact depending upon the facts and circumstances of a particular case. The Tribunal came to the conclusion that the facts referred to hereinbefore do not warrant any inference of fraud. The assessee declared the goods on the basis of their belief of the interpretation of the provisions of the law that the exempted goods were not required to be included and these did not include the value of the exempted goods which they manufactured at the relevant time. The Tribunal found that explanation was plausible, and also noted that the department had full knowledge of the facts about manufacture of all the goods manufactured by the respondent when the declaration was filed by the respondent. The respondent did not include the value of the product other than those falling under T.I. 14-E manufactured by the respondent and this was in the knowledge, according to the Tribunal, of the authorities. These findings of the Tribunal have not been challenged before us or before the Tribunal itself as being based on no evidence."

(iii) Pushpam Pharmaceuticals Co. v. CCE[6]

"4. Section 11-A 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

[6] 1995 Supp (3) SCC 462

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 course 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. Infact 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."

(iv) CCE v. Punjab Laminates (P) Ltd.[7]

"12. At no point of time, the Revenue doubted the correctness or otherwise of the manufacturing process or the ingredients disclosed by the respondent. The stand of the respondent that the industry as such had adopted the same manufacturing process and had been extended the benefit of the exemption notification of 1989 has not been called in question. If the stand of the manufacturer is correct, there was no reason as to why it should be singled out.

13. This Court decided Bakelite Hylam Ltd. [(1997) 10 SCC 350] on 10-3-1997. The impugned notice was issued only on 9-12-1997 evidently relying on or on the basis thereof.

14. It is not a case where the respondents had not disclosed the activities of manufacturing products carried out by them by declaration or otherwise. They responded to each and every query of the appellant, as and when called upon to do so. The authorities of the appellant must have verified the said disclosures. At least they are expected to do so. The disclosure made by the respondent was acceptable to them. Their bona fides were never questioned.

15. The applicability of the extended period of limitation is, therefore, required to be considered in the aforementioned context. The proviso, it is trite, provides for an exception. It is not the rule. A case, therefore, has to be made out for attracting the same.

16. In Primella Sanitary Products (P) Ltd. v. CCE [(2005) 10 SCC 644 : (2005) 184 ELT 117] a three-Judge Bench of this Court was dealing with a case where a concession was made by a counsel appearing on behalf of the Revenue. The

[7] (2006) 7 SCC 431

Court opined that although the item was put under the right classification list but they had not been permitted to take a different stand stating: (SCC p. 648, para 13)
"As the matter of classification has proceeded on a matter of concession of facts we do not allow the appellants to withdraw from that concession. They are now not permitted to argue on the question of classification."

17. In Pahwa Chemicals (P) Ltd. v. CCE [(2005) 189 ELT 257] this Court held:
"The appellants have all along claimed that merely because they were affixing the label of a foreign party, they did not lose the benefit of Notification No. 175/86-CE as amended by Notification No. 1/93-CE The view taken by the appellants had, in some cases, been approved by the Tribunal which had held that mere use of the name of a foreign party did not disentitle a party from getting benefit of the notifications. It is only after larger Bench held in Namtech Systems Ltd. v. CCE [(2000) 115 ELT 238 (cegat)] that the position has become clear. It is settled law that mere failure to declare does not amount to wilful misdeclaration or wilful suppression. There must be some positive act on the part of the party to establish either wilful misdeclaration or wilful suppression. When all facts are before the Department and a party in the belief that affixing of a label makes no difference does not make a declaration, then there would be no wilful misdeclaration or wilful suppression. If the Department felt that the party was not entitled to the benefit of the notification, it was for the Department to immediately take up the contention that the benefit of the notification was lost."

18. Keeping in view the peculiar facts and circumstances of this case, we are of the opinion that it is not a fit case where this Court should interfere. The appeal is, therefore, dismissed. The parties shall, however, pay and bear their own costs."

9.4. Therefore, in the absence of fraud, collusion, wilful misstatement, or suppression of facts with an intent to evade payment of service tax, the invocation of the extended period of limitation under Section 73 of the Finance Act, 1994 is wholly unwarranted. Mere non-payment of service tax, by itself, does not justify the invocation of the extended limitation period. Accordingly,

the show cause notice issued by the department is clearly time-barred. On this ground alone, the impugned order deserves to be set aside.

10. We next come to the question of the period between 01.07.2012 to 17.02.2014, for the purpose of exemption from the levy of service tax. Undoubtedly, the services provided by cord blood banks, including preservation of stem cells or any other services related to such preservation, are exempt from service tax, under Entry 2A of Notification No. 4/2014-ST dated 17.02.2014. According to the appellant, the said notification is clarificatory in nature and therefore, ought to be applied retrospectively with effect from 01.07.2012.

10.1. In the present case, since we have rendered a finding that stem cell banking services constitute a healthcare service, which was specifically so stated by the notification dated 17.02.2014, the said notification must necessarily be held to be illustrative and clarificatory to that extent. This clarification/specific exemption, coupled with our finding that stem cell banking services fall within the ambit of "Healthcare Services", must necessarily inure to the benefit of the appellant. This is not to say that the notification dated 17.02.2014 is retrospective in operation. In other words, the said notification cannot be applied to cases where assessments have already been made and service tax has been paid without demur. However, in respect of pending claims, ongoing assessments, and existing disputes that are sub judice, it can be said that the notification dated 17.02.2014 is in the nature of a clarification to

the earlier notification dated 01.07.2012. At this juncture, it is pertinent to mention that we have also noted and perused the judgment of the Madras High Court in *Life Cell International (P) Ltd. v. Union of India and others*[8], wherein the nature of the 2014 notification was considered and it was held that the amendment introduced by Notification No. 4/2014-ST cannot be construed as clarificatory and hence, does not have retrospective effect. However, the Court explicitly stated that it did not render any finding on whether the activities of the petitioner therein, fell within the ambit of "Healthcare Services" so as to qualify for the exemption. For better appreciation, the relevant paragraphs of the said decision are extracted below:

> ***"24.*** *Reverting to the case on hand, the so-called amendment, admittedly, has been inserted by way of Entry 2A into the exemption Notification, dated 20.6.2012 by Notification No. 4/2014-ST dated 17.2.2014 to the effect that "Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation". Therefore, the intention of the legislature is clear that bringing the services provided by cord blood banks by way of preservation of stem cells under the exemption Notification in order to give exemption of service tax, however, it has not been specifically mentioned that the said amendment should be with effect from the date of exemption Notification. i.e. 20.6.2012, wherein, originally, Entry No. 2 has been inserted, giving exemption towards healthcare services by clinical establishment, an authorised medical practitioner or para-medics. Therefore, by virtue of such amendment, it should be construed that the establishments which provides the above said services will get exemption of service tax with effect from the date of amendment, i.e. 17.2.2014 only and they cannot claim it with retrospective effect. The uncontroverted position is that before the amendment came into force, for the services provided by the cord blood banks were leviable and in fact, the petitioner has also paid Rs. 1 Crores each towards service tax with effect from 01.07.2012. Therefore, from 17.2.2014 onwards, by virtue of amendment, the said services were exempted from levy of service tax, which by itself explicit that the said amendment is extending remedial effect to the cord blood banks from being levied with service tax. Therefore, having regard to the*

[8] (2016) 6 VST-OL 50

same, this Court is of the considered view that the so-called amendment is only a remedial nature and it can have prospective effect only. If at all the legislature thought it fit to extend exemption with retrospective effect, it would have certainly expressed by mentioning specifically to the effect that the amendment would be with effect from 20.6.2012. Since the amendment having been brought into force from a particular date, i.e. 17.2.2014, no retrospective operation thereof can be contemplated prior thereto.

25. *As regards the decisions (cited supra) relied upon by the learned senior counsel for the petitioner are concerned, I am of the view that those decisions will no way helpful to the case of the petitioner. In "WPIL Ltd., case (cited supra), the Hon'ble Supreme Court, having considered the fact that already, the Government issued Notification dated 1.3.1994, giving exemption from imposing excise duty on parts of power driven pumps used in the factory premises for manufacture of power driven pumps and to clarify the position, the subsequent notification dated 25.4.1994 was issued giving exemption towards the goods that are used within the factory of production in the manufacture, held that the subsequent notification was not a new one granting exemption for the first time in respect of parts of power driven pumps to be used in the factory and therefore, the subsequent notification is clarificatory nature and it has to be given with retrospective effect. But in the present case, it is not in dispute that the so-called amendment Notification issued by the Government, giving exemption for the first time towards the services provided by cord blood banks by way of preservation of stem cells and hence, it cannot be considered as clarificatory in order to give retrospective effect.*

26. *In "Golden Coin case (cited supra), the expression "income" in the statute appearing in Section 2(24) of the Act has been clarified to mean that it is an inclusive definition and includes losses, that is, negative profit. This has been held so by the Apex Court on the strength of its earlier judgments in "CIT v. Harprasad and Co. (P) Ltd. [(1975) 3 SCC 868: 1975 SCC (Tax) 158: (1975) 99 ITR 118] and followed in "Reliance Jute and Industries Ltd. v. CIT [(1980) 1 SCC 139: 1980 SCC (Tax) 67: (1979) 120 ITR 921]. After an elaborate and detailed discussion, the Apex Court held with reference to the charging provisions of the statute that the expression "income" should be understood to include losses. The expression "profits and gains" refers to positive income whereas "losses" represents negative profit or in other words minus income. Considering this aspect of the matter in greater detail, the Apex Court overruled the view expressed by the two learned Judges in "Virtual Soft Systems [(2007) 9 SCC 665: (2007) 289 ITR 83]. The Apex Court adopted the proposition of law that though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed and if it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such*

an operation and in the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. When this ratio is applied to the case on hand, I am of the view that the language used in the so-called amendment is clear that the exemption is given towards the services provided by cord blood banks by way of preservation of stem cells and it cannot be construed that such exemption shall have retrospective effect.

27. *For the foregoing discussion, I am of the considered opinion that the so-called amendment cannot be viewed as a clarificatory one and therefore, this Court is unable to countenance the argument advanced by the learned senior counsel that the so-called amendment is only a clarificatory nature.*

28. *Accordingly, the Writ Petition fails and it is dismissed. No costs. Consequently, connected MPs are closed. However, it is once again made clear that this Court has not rendered any finding regarding whether the activities of the petitioner would fall within the ambit of "health care service" and thereby, the so-called amendment would apply in order to claim exemption of service tax. The authorities are at liberty to determine this aspect in accordance with law."*

10.2. It is a well-settled principle of law that unless a notification or circular explicitly provides for retrospective operation, it must be construed as prospective. Admittedly, the said notification does not contain any express provision indicating retrospective effect. Therefore, it can only be applied prospectively. However, for the reasons stated in the preceding paragraphs, while we concur with the decision of the Madras High Court to the extent that Notification No. 4/2014-ST cannot be considered to be retrospective, we are of the considered opinion that the said amendment is indeed clarificatory. To this limited extent, the judgment in *Life Cell International (P) Ltd. (supra)* stands overruled in principle. Accordingly, the impugned order overlooks the comprehensive scope of the exemption and is therefore, liable to be set aside.

11. The next aspect to be considered herein is, whether the services rendered by the appellant – relating to enrolment, collection, processing, and storage of umbilical cord blood stem cells – fall within the definition of "Healthcare Services", so as to qualify for exemption from service tax during the disputed period.

11.1. Notification No.25/2012-ST dated 20.06.2012 issued by the Ministry of Finance, provided a consolidated list of services exempt from service tax. Under Serial No.2, "Healthcare Services" are exempt and the same reads as under:

> *"2. Healthcare services by a clinical establishment, an authorized medical practitioner or para-medics".*

Clause 2(t) of the said Notification defines "health care services" broadly covering diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy in any recognised system of medicines in India. The said clause reads as under:

> *""health care services" means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma."*

It is clear that the use of the phrase "any service" gives an expansive scope to the term. Though the terms "diagnosis", "treatment", and "care" are not specifically defined under the Finance Act, 1994, their ordinary meanings (as per Oxford and Black's Law Dictionaries) include acts like identifying illness

causes, curing diseases or injuries, and ensuring well-being or preventive healthcare.

11.2. The appellant qualifies as a clinical establishment under clause 2(j) of the Notification No.25/2012-ST, which fact is not disputed by the Department. The appellant's core activities – collection and preservation of umbilical cord blood (UCB) stem cells – are preventive in nature, with potential curative applications for life-threatening diseases. The processing, testing, cryopreservation, and eventual release for transplantation constitute integral components of healthcare aimed at future diagnosis, treatment, and care.

11.3. The appellant has submitted various materials – brochures, laboratory processes, transplant coordination protocols, clinical trials, and scientific articles – demonstrating that their services include not only storage but also vital diagnostic and therapeutic support. Stem cell transplantation depends on extensive matching and testing conducted by the appellant. Doctors, who have utilised their services have certified the critical role played by the appellant in treating blood-related disorders.

11.4. Further, the appellant is actively involved in post-transplant monitoring, clinical trials (including those for spinal cord injuries), and collaborations with international medical experts. Their services also support research on conditions like autism and cerebral palsy. Recognition under the Drugs and Cosmetics Act (post-amendment dated 17.12.2012) reinforces their status as a legitimate healthcare provider.

11.5. The Department contends that the appellant's services were exempted only from 17.02.2014 under Entry 2A of Notification No. 4/2014-ST. However, the insertion of Entry 2A does not curtail the scope of Serial No.2 under Notification No. 25/2012-ST. The absence of express inclusion of cord blood services in earlier notifications does not alter their essential healthcare nature. Therefore, the appellant's services are well within the ambit of "Healthcare Services".

11.6. The Andhra Pradesh High Court in *M. Satyanarayana Raju Charitable Trust v. UOI*[9], interpreted "Healthcare Services" to include preventive services. Being a beneficial exemption, the provision must be liberally construed. The following paragraphs of the said judgment is pertinent:

> *"18. Where the second respondent appears to have gone wrong is that the second respondent has taken the services provided by the petitioner for the wellbeing of an individual, as something out of the purview of the diagnosis or treatment. The second respondent has fallen into an error in thinking so, due to a fundamental misconception that is normally prevalent in society. While allopathic system of medicine is only for diagnosis and treatment of illness, many of the indigenous system of medicines, seek to prevent rather than prescribe.*
>
> *...*
>
> *20. Therefore, an exemption notification, which is understood by the respondents to confer a benefit upon the clinical establishments, cannot be made inapplicable to a holistic health care institution such as the petitioner herein, as the same would tantamount to killing our indigenous system of health and well being. A system of medicine which focused mainly on healthy living and not merely a prolonged existence cannot be denied the benefit of the exemption notification on the basis of a misconception that a clinical establishment is one that would treat people after they fall ill and not one which will prevent people from falling ill."*

[9] 2017 SCC OnLine Hyd 168

11.7. In *CCE, Bombay-I & Anr. vs. Parle Exports Pvt. Ltd.*[10], this Court held that an exemption notification has statutory force equivalent to that of the Act. The relevant paragraphs are extracted as under:

> ***"17.*** *……. The expressions in the Schedule and in the notification for exemption should be understood by the language employed therein bearing in mind the context in which the expressions occur. The words used in the provision, imposing taxes or granting exemption should be understood in the same way in which these are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them. It is, however, necessary to bear in mind certain principles. The notification in this case was issued under Rule 8 of the Central Excise Rules and should be read along with the Act. The notification must be read as a whole in the context of the other relevant provisions. When a notification is issued in accordance with power conferred by the statute, it has statutory force and validity and, therefore, the exemption under the notification is as if it were contained in the Act itself.*
>
> *…….*
>
> *While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided.*
>
> ***18.*** *In Hindustan Aluminium Corpn. Ltd. v. State of U.P. [(1981) 3 SCC 578 : 1981 SCC (Tax) 280 : (1982) 1 SCR 129] this Court emphasised that the notification should not only be confined to its grammatical or ordinary parlance but it should also be construed in the light of the context. This Court reiterated that the expression should be construed in a manner in which similar expression have been employed by those who framed relevant notification. The court emphasised the need to derive the intent from a contextual scheme. In this case, therefore, it is necessary to endeavour to find out the true intent of the expressions "food products and food preparations" having regard to the object and the purpose for which the exemption is granted bearing in mind the context and also taking note of the literal or common parlance meaning by those who deal with those goods, of course bearing in mind, that in case of doubt only it should be resolved in favour of the assessee or the dealer avoiding, however, an absurd meaning. Bearing the aforesaid principles in mind, in our opinion, the revenue is right that the non-alcoholic beverage bases in India cannot be treated or understood as new "nutritive material absorbed or taken into the body of an organism which serves for the purpose of growth, work or repair and for the*

[10] (1989) 1 SCC 345

maintenance of the vital process" and an average Indian will not treat non-alcoholic beverage bases as food products or food preparations in that light."

Additionally, in Advance Ruling No. KAR ADRG 24/2020, the Karnataka Authority for Advance Ruling held that stem cell donor - related services are exempt as healthcare services.

11.8. Notably, the Ministry of Health and Family Welfare, through an Office Memorandum dated 22.05.2013 clarified in consultation with the National AIDS control Organization that stem cell banking is a part of "health care services" and qualifies for exemption. The said O.M. is reproduced below, for the sake of reference:

X-11035/41/2012-DFQC (Pt)
Government of India
Ministry of Health & Family Welfare
Department of Health and Family Welfare
(DFQC Section)

Nirman Bhawan, New Delhi
Dated the 22 May, 2013

OFFICE MEMORANDUM

Subject: Service Tax Exemption to Stem Cell Banks – Regarding.

The undersigned is directed to refer to representations dated 24.07.2012, 21.09.2012, 27.02.2013, 08.03.2013 and 20.03.2013 of Association of Stem Cell Banks of India on the subject cited above and to say that this Department has examined the matter in consultation with National Aids Control Organization, Department of Aids Control, Ministry of Health and Family Welfare. In this connection, this Department recommends that the services rendered by the Stem Cell Banks are part of healthcare services and hence they may be considered for service tax exemption.

2. This issues with the approval of the Secretary (Health and Family Welfare).

(Sudhir Kumar)
Under Secretary to the Government of India
Telefax: 23062419

The Secretary,

Department of Revenue,
Ministry of Finance,
North Block, New Delhi.

12. Thus, it is evident that the appellant's services fall within the ambit of "Healthcare Services" as defined under the exemption notification. These services are preventive and curative in nature and encompass diagnosis, treatment, and care.

13. As regards the imposition of penalties, it is evident that the appellant neither suppressed nor concealed any material facts from the Department. On the contrary, they were in constant communications with the Department, seeking clarifications on whether their services were exempt from the levy of service tax. As already held by us, the show cause notice issued by the Department is time-barred. Therefore, the imposition of penalties is not warranted.

13.1. Further, there is nothing on record to indicate any intent on the part of the appellant to evade payment of service tax. All relevant information and documents were duly disclosed and furnished to the Department. The appellant acted under a *bona fide* belief that their activities were covered under Entry 2 of the Exemption Notification dated 20.06.2012. The records substantiate that the appellant had addressed multiple representations – dated 24.07.2012, 21.09.2012, 27.02.2013, 08.03.2013 and 20.03.2013 to the Ministry, seeking

clarifications on the applicability of the exemption. Their consistent engagement with the authorities further reinforces their *bona fide* conduct.

13.2. Moreover, during the course of investigation, the appellant deposited a sum of Rs. 40,00,000/- on 30.03.2014. It is a well settled legal position that penal provisions are meant to deter deliberate contravention of statutory provisions and are not intended to penalize *bona fide* taxpayers. In this context, the imposition of penalties and interest appears arbitrary, unjust, and unsustainable in law.

14. For the foregoing reasons, the impugned order is set aside in its entirety. Accordingly, these appeals stand allowed. The deposit of Rs. 40,00,000/- made by the appellant shall be refunded to them within a period of four weeks from the date of receipt of this judgment. No costs. Connected miscellaneous application(s), if any, shall stand closed.

…… J.
[J.B. Pardiwala]

…… J.
[R. Mahadevan]

New Delhi;
July 14, 2025