

Surrender of Registration Certificate- Onus on the Department to prove it was correct

Where a Service Tax assessee voluntarily surrenders the Registration Certificate and stops paying Service Tax the duty is cast on the Department to verify whether the assessee has rightly gone out of the ambit of service tax or not. If the Department fails to do so within a stipulated time period the assessee cannot be subsequently held responsible for any inconsistency or error on the part of the assessee in withdrawing the Registration certificate. This principle was put to test in the case of **Amalner Cooperative Bank Ltd.V/s Commissioner of C. Ex. Nashik 2011 (24) STR 618 (Tri.-Mumbai)**

The brief facts of the case were that the appellant was providing banking and other financial services and was registered with the department and paying service tax on their taxable services. On 19-9-2005, the appellant surrendered their service tax registration on the ground that the appellant are entitled for the benefit of Notification 6/2005, dated 1-3-2005 as their taxable services are below Rs. 4 lakhs. Thereafter, in January 2008 a survey was conducted at the premises of the appellant wherein it was found that the appellant had wrongly availed the benefit of Notification 6/2005 and claimed exemption thereunder. Therefore, it was found that the appellant was liable to pay service tax for the entire period.

The advocate for the appellant did not contest the case on merits but submitted that the allegation of suppression cannot be alleged against the appellant. Therefore, demand and extended period are not sustainable.

On the other hand the Departmental Representative submitted that the appellants were registered with the Department under the category of Banking and other Financial service for service tax purposes. Therefore, they were aware of the provisions of service tax at the time of surrendering of the registration certificate and whether benefit of Notification 6/2005 is available to them or not. Therefore, question of misinterpretation of Notification does not arise. It is a question of wilful suppression of the facts, hence the impugned order be confirmed.

The Hon'ble Tribunal after considering the submissions made by both sides held *"I find that it is not a disputed fact that on 19-9-2005, the appellant had surrendered the service tax registration by availing the benefit of the Notifications 6/2005 dated 1-3-2005. As soon as the registration certificate has been surrendered by appellant, duty is cast on the department to verify whether the appellant has rightly gone out of the ambit of service tax or not. The department has not done this exercise within one year of the surrender of the registration certificate. Therefore, as held by this Tribunal in the case of **Needwise Advertising P. Ltd. v. CST, Ahmedabad – 2011 (21) S.T.R. 229 (Tri-Ahmd.)** that interpretation of surrender as revealing deliberate intention not to pay service tax is not sustainable as surrender of*

registration to be taken as made on belief of non-requirement of such registration. Therefore, onus is on revenue to find out the cause of surrendering registration if action is not taken at the same time, the same cannot be questioned subsequently.”

Therefore, the assessee cannot be held liable for non-payment of duty arising out of surrender of registration certificate if the Department does not prove within a period of one year that such surrender of Registration was improper.