

Prediction comes true

(By swamy associates)

Readers' kind attention is invited to our earlier article titled **Committing mistakes and correcting it retrospectively**" published in 2003 (57) RLT R 7, relating to the retrospective amendments carried out by the Finance Act, 2003, in the matter of demand of service tax from the service recipients, in respect of GTO/C&FA services.

The tailpiece of the article, is reproduced below :

Tailpiece: Has the present retrospective amendments cured all defects in the earlier attempts of the department. The answer is a polite NO. Anything can be done by the government under Section 73, only if a return envisaged in Section 70 or 71 has been filed or not filed by the assessee. But the present return has been prescribed under Section 71 A. So even if the present return is not filed, no demand can be raised under section 73. But don't try to take shelter under this lacunae. Probably, next year they may cure it by another retrospective amendment. They can afford to commit mistakes and correct it as and when it is pointed out, with immunity. But you and I cannot.

The Hon'ble Tribunal has made the following observations and allowed the appeals, as reported in 2004 – TAXINDIAONLINE – 39 – CESTAT DELHI.

"The above would show that even the amended section 73 takes in only the case of assessee who are liable to file return under section 70. Admittedly, the liability to file return is cast on the appellants only under Section 71 A. The class of persons who come under Section 71 A is not brought under the net of Section 73. The above being the position, show cause notices issued to the appellants invoking section 73 are not maintainable".

The first part of our prediction has been vindicated by the Hon'ble Tribunal. Now, we have to wait and see whether the government is going to come out with another retrospective amendment, to overcome the present decision of the Hon'ble Tribunal.