

**Customs, Excise & Service Tax Appellate Tribunal  
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

**Service Tax Appeal No.11214 of 2013**

(Arising out of OIA-PJ/448/VDR-I/2012-13 dated 20/02/2013 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-VADODARA-I)

**Transpek Silox Industry Ltd**

Kalali Road,  
Atladra, Vadodara, Gujarat

**.....Appellant**

*VERSUS*

**C.C.E. & S.T.-Vadodara-i**

1st Floor...Central Excise Building,  
Race Course Circle,  
Vadodara, Gujarat-390007

**.....Respondent**

**APPEARANCE:**

Shri Maunik Yajnik, Advocate for the Appellant  
Shri Rajesh Agarwal, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR  
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

**Final Order No. A/ 10241 /2023**

DATE OF HEARING: 27.01.2023  
DATE OF DECISION: 07.02.2023

**RAMESH NAIR**

The issue involved in the present case is that whether the appellant is liable to pay service tax on the services received from abroad for the period prior to 18.04.2006 and thereafter.

02. Shri Maunik Yajnik, learned counsel appearing on behalf of the appellant at the outset submits that the appellant have already paid the service tax due for the period post 18.04.2006, the service tax was not leviable on the said service prior to 18.04.2006. He submits that the appellant is contesting only imposition of penalty under Section 76,77 & 78 and Rule 7-C of Service Tax Rules, 1994. He submits that there was no mala fide on the part of the appellant for the reason that levy of service tax on foreign service has been under doubt and the issue was pending in various cases and finally the Hon'ble Bombay High Court in the case of INDIAN NATIONAL SHIP OWNERS ASSOCIATION- 2009 (13) S.T.R. 235 (Bom.) has decided the issue of levy of service tax on foreign service, in such case the penalty cannot be imposed.

03. Shri Rajesh Agarwal, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that there was no dispute about service tax dues, service tax was not payable prior to 18.04.2006 as held by Hon'ble Bombay High Court in the case of INDIAN NATIONAL SHIP OWNERS ASSOCIATION (supra).

4.1 As regard the service tax demand post 18.04.2006, the appellant have admittedly paid the same. The only limited issue to be decided is whether the appellant is liable for penalty under Section 76, 77 & 78 and Rule 7-C. We find that the issue regarding the levy of service tax on foreign service has been under litigation in various cases and finally decided by the Hon'ble Bombay High Court.

05. In this position, mala fide cannot be attributed to the appellant. We are therefore, of the view that not only in the facts and circumstances of the case but also by invoking Section 80, penalties under Section 76, 77 & 78 are not imposable accordingly, we set aside these penalties.

06. However, there is a lapse on the part of the appellant for non-filing of returns in time therefore, the penalty imposed under Rule 7-C of Service Tax Rules, 1994 was correctly imposed therefore, the said penalty is sustained.

07. Accordingly, the impugned order is modified to the above extent. Appeal is partly allowed in the above terms.

(Pronounced in the open court on 07.02.2023 )

**(RAMESH NAIR)**  
**MEMBER (JUDICIAL)**

**(RAJU)**  
**MEMBER (TECHNICAL)**