CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 10366 of 2014-DB

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-002-COM-008-13-14 dated 15.10.2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-II]

Commissioner of Central Excise & ST, Vadodara-ii .... Appellant
1st Floor, Room No.101, New Central Excise Building,
Vadodara, Gujarat-390023

VERSUS

Dahej Harbour And Infrastructure Ltd .... Respondent
P.O. Dahej, Lakhigam, BHARUCH
BHARUCH.

APPEARANCE :

Shri Kalpesh P Shah, Asst. Commissioner (AR) for the Appellant-Revenue
Shri Ambrish Pandey, Advocate for the Respondent- Assessee

CORAM: HON'BLE MR. RAMESH NAIR, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

DATE OF HEARING/ DECISION: 26.04.2023

FINAL ORDER NO. A/11036 / 2023

RAMESH NAIR :

This appeal has been filed by the Revenue only on the limited ground that Adjudicating Authority has imposed penalty only upto 18.05.2008 whereas this penalty should have been imposed for the entire period.

2. Shri Kalpesh P Shah, learned Asst. Commissioner (AR) appearing on behalf of the Revenue at the outset submits that, against the very common impugned order, the assessee's appeal has been disposed of by way of remand to the Adjudicating Authority.

3. Shri Ambrish Pandey, learned Counsel appearing on behalf of the respondent submits that even though the matter was remanded but the fact remains that the Adjudicating Authority has imposed penalty under Section 76 and 78 of the Finance Act, 1994 simultaneously. He submits that penalty

under Section 76 cannot be imposed when penalty under Section 78 is imposed as held by jurisdictional High Court in the case of *Raval Trading Company vs. CST – 2016 (42) STR 210 (Guj.)*.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that the limited issue involved in this case is that whether the penalty under Section 76 of Finance Act, 1994 can be imposed for the period after 18.05.2008. We find force in the arguments of the learned Counsel for the respondent that it is settled as per Hon'ble Gujarat High Court judgment in the case of Raval Trading Company (supra) that once penalty under Section 76 is imposed no simultaneous penalty under Section 78 can be imposed. However, since the matter has already been remanded by our order dated 10.04.2023, Revenue's this appeal is also disposed of by way of remand to the Adjudicating Authority. Accordingly, we allow the appeal by way of remand to the Adjudicating Authority for passing a fresh order along with assessee's remanded matters in the Tribunal's order dated 12.04.2023.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(C L Mahar)
Member (Technical)

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