CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 4

SERVICE TAX APPEAL NO. 11530 OF 2016

(Arising out of OIA-AHM-EXCUS-003-APP-007-16-17 dated 26/04/2016 passed by Commissioner of Central Excise and Service Tax-AHMEDABAD-III)

Divya Construction ....**Appellant**
Shri Popatbhai S Thakkar, A-10, Sudarsan Apartment,
Near Sai Baba Temple, Ghatlodia,
Ahmedabad, Gujarat

VERSUS

COMMISSIONER OF C.E. & S.T.-Ahmedabad-iii ......**Respondent**
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat- 380009

Appearance:
Present for the Appellant :Shri Rohan Thakkar, Chartered Accountant
Present for the Respondent: Shri A R Kanani, Superintendent (AR)

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

Final Order No. 10681/2024

Date of Hearing: **08/03/2024**

<u>RAMESH NAIR</u>

This appeal is directed against Order-In-Appeal No. AHM-EXCUS-003-APP-007-16-17 dated 26.04.2016 whereby the learned Commissioner (Appeal) upheld the demand of service tax amounting of Rs. 2,04,980/- along with interest and penalty.

2. Shri Rohan Thakkar, Learned Chartered Accountant, appearing on behalf of the appellant submits that they are not disputing the tax liability confirmed in the Order-In-Original. However, he submits that the major amount was already paid in course. There is some short fall which was paid during the investigation thus total amount of Rs. 2,10,582/- with an interest of Rs. 31,735/- was paid before issuance of show cause notice. He submits that while the challan related to these payments have been submitted before the Commissioner (Appeals), the appellant also

approached the jurisdictional range officer for confirmation of the payment made by them. However, there was no response from the range officer. It is his submission that since all the challan have been submitted to the Commissioner (Appeals), the Commissioner (Appeals) should have taken the cognizance of the same and decided the appeal.

2.1 As regard the penalty, he submits that the major amount was already paid in routine course before investigation and balance amount of Rs. 1,23,106/- was paid during investigation. Therefore, there was no intention of appellant to evade duty hence no penalty should be imposed.

3. Shri A R Kanani, Learned Superintendent (AR) appearing for the Revenue reiterates the findings of the impugned order.

4. I have carefully considered the submission made by both the sides and perused the records. I find that there is a short fall in the payment of Service Tax which appellant have made by paying their balance amount during the investigation. However, the major amount of the service tax was already paid before investigation. The appellant have not contested the liability of service tax confirmed by the Order-in-Original. The Learned Commissioner (Appeals) has rejected appeal only on the ground that the challans submitted by the appellant have not been verified by the Range Superintendent. I am surprised that once challans were submitted to the commissioner (Appeals), it is duty of the department to get it verified the authenticity of such payment instead of putting a burden on the appellant to run to pillar to post to get it verified. It is also fact on the record that the appellant have approached the Range Superintendent. Subsequently, they have given a letter also but there is absolutely no response from the department. In such case, whatever challans submitted by the appellant must be taken as proof of payment of service tax. Accordingly, on the basis

of the challans submitted by appellant, I found that there is no short fall in the payment of service tax. Since, the entire payment of service tax have been made before issuance of show cause notice and the interest for delayed payment was also paid, the appellant's case is squarely covered by Section 73(3) of Finance Act, 1994. Accordingly no show cause notice should have issued. Consequently, no penalty is impossible. The revenue is at liberty to verify the correctness of the challan and payment thereunder. If any discrepancy is found, department can approach this Tribunal for rectifying the present order in accordance with law.

5. Accordingly, the demand of service tax which stands paid is maintained, penalty is set aside. Impugned order is stands modified to the above extent. Appeal is allowed in the above terms.

(Dictated and pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

Raksha