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

REGIONAL BENCH-COURT NO. 3

Service Tax Appeal No. 10800 of 2016 - DB

(Arising out of OIO-BHR-EXCUS-000-031-15-16 dated 31/12/2015 passed by Commissioner of Central Excise, Customs and Service Tax-Bharuch)

COMMISSIONER OF C.E-Bharuch **........Appellant**
Vadodara-II,GST Bhavan, Subhanpura, Vadodara
Vadodara, Gujarat- 390023

VERSUS

SHREE SAI ENTERPRISES **......Respondent**
Plot No. 7 To 10, Tarsadi, Kosamba,
Surat, Gujarat

APPEARANCE:
Shri Rajesh R Kurup, Superintendent (AR) for the Appellant
None appeared for the Respondent

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

Final Order No.11512/2024

DATE OF HEARING: 12.03.2024
DATE OF DECISION: 05.07.2024

RAMESH NAIR

This is the appeal filed by the Revenue, seeking imposition of penalty under Section 78 of the Finance Act, 1994 on the ground that since the demand was raised invoking the extended period which involved suppression of fact, fraud, collusion with intend to evade payment of service tax, the Respondent/Assessee is liable to pay penalty under Section 78 of the Finance Act, 1994.

2. Shri Rajesh R Kurup, Learned Superintendent (AR) appearing on behalf of the Appellant/Revenue reiterates the grounds of appeal. He submits that there is no dispute on the fact of the case that the demand was raised invoking extended period. The Adjudicating authority has also confirmed the demand holding that there is a suppression of fact, on the

part of the Assessee. Therefore, in that case the authority has wrongly not imposed the penalty under Section 78 of the Finance Act, 1994.

3. None appeared on behalf of the Respondent/Assessee.

4. We have carefully considered the submission made by Learned AR and perused the records. We find that though the Adjudicating Authority has not given proper reasoning for non imposition of penalty under Section 78. However, we find that the Revenue in the present appeal sought to impose the penalty under Section 78. The said Section is reproduced below:-

> *"78. (1) Where any service tax has not been levied or paid, or has been short-levied or shortpaid, or erroneously refunded,* ***by reason of fraud or collusion or wilful mis-statement or suppression of facts*** *or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under the proviso to sub-section (1) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty which shall be equal to hundred per cent. of the amount of such service tax:*
>
> *Provided that in respect of the cases where the details relating to such transactions are recorded in the specified record for the period beginning with the 8th April, 2011 upto the date on which the Finance Bill, 2015 receives the assent of the President (both days inclusive), the penalty shall be fifty per cent, of the service tax so determined.*
>
> *Provided further that where such service tax and interest is paid within a period of thirty days of –*
>
> > *(i) the date of service of notice under the proviso to sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded.;*
> >
> > *(ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined:*
>
> *Provided also that the benefit of reduced penalty under the second proviso shall be available. only if the amount of such reduced penalty is also paid within such period."*

From the above Section 78 read with first Proviso thereof, it is clear that the penalty to be imposed is 50% of the Service Tax so determined, in a case where the details relating to such transaction are recorded in the specified records.

4.1 We find that nonpayment of Service Tax was detected from the books of account of the appellant and the transactions were recorded in such books and the payments for service charges were also recorded. Therefore, the first Proviso to Section 78 is clearly applicable in the present case. The total Service Tax demand confirmed is Rs. 92,57,467/-. The appellant have discharged the service tax along with interest. As per the revenue's appeal itself, the amount of penalty would be below Rs. 50 Lakhs, if calculated @ 50% of the Service Tax demand. Therefore, Revenue's appeal is not maintainable on the Government's litigation Policy as prescribed under Circular No. F. No. 390/Misc/116/2017-JC dated 22.08.2019, according to which the Revenue is not supposed to file the appeal if the amount involved is less than 50 Lakhs.

5. Therefore, we are of the view that this appeal can be disposed of on the Government's Litigation Policy. Hence, we dismiss the Revenue's Appeal.

(Pronounced in the open court on 05.07.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(C L MAHAR)
MEMBER (TECHNICAL)

Raksha