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

REGIONAL BENCH - COURT NO. 3

**SERVICE TAX Appeal No. 12281 of 2018-DB**

[Arising out of Order-in-Original/Appeal No VAD-EXCUS-001-COM-04-18-19 dated 03.05.2018 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I]

**Commissioner of Central Excise & ST, Vadodara .... Appellant**
1st Floor, Central Excise Building,
Race Course Circle, Vadodara, Gujarat - 390007

*VERSUS*

**L&T Sargent & Lundy Limited .... Respondent**
Radhadaya Complex, 3rd Floor, Old Padra Road,
VADODARA, GUJARAT -390015.

**APPEARANCE :**

Shri Rajesh Nathan, Asst. Commissioner, (AR) for the Appellant -Assessee
Shri Anindya Bikash Mondal Deputy General Manager (Indirect Taxes) & Shri Rohitabh Budhia, Head- Finance and Accounts. For the Respondent

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

DATE OF HEARING /DECISION: 01.08.2024

**FINAL ORDER NO. 11735/2024**

**RAMESH NAIR :**

This Revenue's appeal seeks imposition of penalty of 100% instead of 50% imposed under section 78 of the Finance Act, 1994 by the Adjudicating Authority in the impugned order.

2. Shri Rajesh Nathan, learned Assistant Commissioner, (AR) appearing for Revenue reiterates the grounds of appeal.

3. Shri Anindya Bikash Mandal Deputy General Manager (Indirect Taxes) with Shri Rohitabh Budhia, Head, Finance and Accounts appeared for the respondent. Shri Mandal, at the outset submits that the Revenue's appeal seeking imposition of remaining 50% penalty under Section 78, which was imposed with reference to confirmation of demand of service tax in the impugned order. He submits that against confirmation of demand and penalties, the appellant had also preferred an appeal before this Tribunal wherein this Tribunal vide Final Order No. A/12459/2021 dated 26.10.2021

set-aside the demand and penalty imposed and allowed the appeal of the respondent. Therefore, Revenue's appeal cannot survive as the proposal of penalty by the Revenue is consequential to demand of service tax which itself does not exist.

4. We have carefully considered the submissions made by both the sides and perused the record. We find that against a common impugned order No. VAD-EXCUS-001-COM-04-18-19 dated 03.05.2018 passed by Commissioner (Appeals) Vadodara-I, the assessee M/s. L&T Sargent & Lundy Limited filed appeal bearing No. ST/12108/2018-DB and against the same impugned order the present appeal is filed by the Revenue. The Revenue's appeal is seeking imposition of additional 50% penalty in addition to 50% penalty already imposed which is consequential to confirmation of demand of service tax. In this Tribunal's Final Order No. A/12459/2021 dated 26.10.2021, the assessee's appeal No. ST/12108/2018, this Tribunal set-aside the demand and penalty imposed by the Adjudicating Authority and allowed the appeal. Therefore, in the light of the fact that appeal of the assessee was allowed whereby the demand of service tax has been set-aside, the present appeal of the Revenue, only seeking imposition of additional 50% penalty, which is consequential to demand which at present does not exist, the appeal became infructuous. Accordingly the Revenue's appeal is dismissed.

*(Operative part of the order pronounced in the open court)*

**(Ramesh Nair)**
**Member (Judicial)**

**(C L Mahar)**
**Member (Technical)**

**KL**