

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

REGIONAL BENCH - COURT NO. 3

SERVICE TAX Appeal No. 424 of 2012-DB

[Arising out of Order-in-Original/Appeal No 254-2012-COMMR-A--RBT-RAJ dated 17.05.2012 passed by Commissioner of Service Tax-RAJKOT]

Jain Products

Rajkot-Gondal Highway,
Opp : Murlidhar Weigh Bridge, Shapar,
RAJKOT, GUJARAT

.... Appellant

VERSUS

Commissioner of Central Excise & ST, Rajkot

Central Excise Bhavan, Race Course Ring Road,
Income Tax Office, Rajkot, Gujarat-360001

.... Respondent

APPEARANCE :

Shri Paresh Sheth, Advocate for the Appellant
Shri Prakash Kumar Singh, Superintendent (AR) for the Revenue.

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

DATE OF HEARING : 13.09.2022

DATE OF DECISION : 19.09.2022

FINAL ORDER NO. A/11138 / 2022

RAMESH NAIR :

This appeal is directed against the order of the Commissioner (Appeals) whereby the order-in-original was upheld and appeal filed by the appellant was rejected.

2. The Adjudicating Authority in order-in-original confirmed the demand under the head of GTA Service in respect of freight amount exceeds to Rs. 750/- and Rs. 1500/-. In the present appeal, the appellant's challenge is limited to the penalty of 75%. The appellant, complying with the option given by Adjudicating Authority, though paid 25% of penalty but after the stipulated time of one month.

3. Shri Paresh Sheth, learned Counsel appearing on behalf of the appellant submits that there is only delay in payment of 25% penalty which is in accordance with the option given by the Adjudicating Authority. Only because of the delay, the option of 25% penalty should not be denied. He further submits that in this case the issue involved is interpretation of provisions for levy of service tax in respect of GTA Service on freight amount exceeding Rs. 750/- and Rs. 1500/- are taxable or otherwise. He submits that appellant has otherwise regularly paid the service tax as per bonafide belief in respect of cases where freight was paid above Rs. 750/- and Rs. 1500/-. Therefore there is no intention to evade payment of service tax. For this reason also penalty of 75% may be set-aside invoking Section 80 of the Finance Act, 1994.

4. Shri Prakash Kumar Singh, learned Superintendent (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

5. We have carefully considered the submissions made by both the sides and perused the record. We find that though the appellant have made ground against confirmation of demand also but learned Counsel Shri Paresh Sheth fairly concedes that the appellant is contesting only for 75% penalty imposed under Section 78 of Finance Act, 1994. We find that though the appellant have paid 25% penalty but the same was paid after the stipulated time period of 30 days. Since the said period is statutory, same cannot be relaxed. However, we find that the appellant otherwise paying service tax as per the belief that service tax is payable only in cases where freight amount is exceeding Rs. 750/-. There is only a misunderstanding about the calculation of limit of Rs. 750/-. Moreover, the appellant have paid entire service tax, interest and 25% penalty. In view of these facts, we are of the

view that a lenient view can be taken particularly for waiver of penalty of 75%. Accordingly, we set-aside penalty of 75% under Section 78 of Finance Act, 1994 invoking Section 80. The demand of service tax, interest (if any) and 25% penalty under Section 78 is upheld.

The appeal is partly allowed in above terms.

(Pronounced in the open court on 19.09.2022)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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