

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

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.246 of 2012

(Arising out of OIA-30/2011/AHD-III/KANPAZHAKAN/COMMR-A-/AHD dated 10/02/2012
passed by Commissioner of Central Excise-AHMEDABAD-III)

Popatlal N Suthar

.....Appellant

33, Geb, Society,
Golden Park, Himmatnagar,
Sabarkantha, Gujarat

VERSUS

C.C.E. & S.T.-Ahmedabad-iii

.....Respondent

Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat-380009

APPEARANCE:

None appeared for the Appellant

Shri. G.Kirupanandan, Superintendent (AR) for the Respondent

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

Final Order No. A/ 11159 /2022

DATE OF HEARING: 14.09.2022
DATE OF DECISION: 23.09.2022

RAMESH NAIR

The brief facts of the case are that the appellant have constructed civil structure and erection of specific equipments provided to M/s. BSNL, M/s. Airtel, M/s. Vodafone, M/s. Essar Gujarat etc. however, on the inquiry it was found that the appellant during the period 2007-08 to 2008-09 have not paid the service tax amount of Rs. 2,60,852/-, which was confirmed, penalty under Section 76 and 78 of the Finance Act, 1994 was also imposed and interest under Section 75 was also demanded. The appellant have paid the service tax amount of Rs. 2,24,198/- along with interest of Rs.79,427/- and 25% penalty before issuance of show cause notice. Against the Order-In-Original the appellant filed appeal before the Commissioner (Appeals) which was rejected by the learned Commissioner (Appeals) by upholding the Order-In-Original.

02. When the matter was called out, none appeared on behalf of the appellant therefore, the appeal is taken up for disposal.

03. Shri G. Kirupanandan, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. We find that there is no dispute as regard the levy of service tax on the construction of foundation of civil structure for M/s. BSNL. It is also fact on record that the appellant have paid the substantial amount of Rs.2,24,198/- out of the total confirmed demand of Rs. 2,60,852/- and also paid the interest and 25% penalty. In view of this fact, we find that 75% of penalty deserves to be dropped and we hold so, however, the appellant is liable to pay the differential duty amount. As regard the penalty imposed under Section 78 & 76 simultaneously, the issue is no longer res-integra in the light of hon'ble Gujarat High Court judgement in the case of RAVAL TRADING COMPANY- 2016 (2) TMI 172 HC GUJ according to which simultaneous penalty under Section 78 and 76 cannot be imposed therefore, following the ratio of the said judgment, we set aside the penalty imposed under Section 76.

05. Accordingly, the impugned order stand modified to the above extent. The appeal is partly allowed in the above terms.

(Pronounced in the open court on 23.09.2022)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Mehul