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

REGIONAL BENCH – COURT NO. 02

Service Tax Appeal No. 10443 of 2017-SM

[Arising Out Of OIA-BHV-EXCUS-000-APP-230-15-16 Dated- 26/12/2016 Passed By Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-RAJKOT(Appeal))

Chhatariya Dyestuff Pvt Ltd **.....Appellant**
Near Gidc Estate, Mahuva
Bhavnagar, Gujarat

VERSUS

C.C.E. & S.T.-Bhavnagar **.....Respondent**
Plot No.6776/B-1...Siddhi Sadan, Narayan Upadhyay Marg,
Beside Gandhi Clinic, Near Parimial Chowk,
Bhavnagar, Gujarat-364001

APPEARANCE:
None appeared for the Appellant
Shri. Anand Kumar, Superintendent (AR) for the Appellant

CORAM: HON'BLE MR. SOMESH ARORA MEMBER (JUDICIAL)

FINAL ORDER NO. 12844 /2024

DATE OF HEARING: 22.11.2024
DATE OF DECISION:22.11.2024

01. None appeared for the party, the matter is taken up on merits.

02. Learned AR pointed out initially that this Court has the discretion to admit or not admit appeal below Rs. 2 Lakhs which was earlier a limit of Rs. 50,000/-. This Court took up the matter to check whether the appeal can be admitted or not. It has transpired that both the lower authorities have imposed penalty for not taking registration against the appellant under Section 77(1) (A) which at the relevant time and prior to amendment carried out on 10.05.2013, read as follows:

> *2. Existing clause (a) substituted by the Finance Act, 2013 (17) of 2013), dt. 10-5-2013. Prior to substitution, it read as under.*
>
> *"(a) who is liable to pay service tax, or required to take registration, fails to take registration in accordance with the provisions of section 69 or rules made under this Chapter shall be liable to pay a penalty which may extend to ten thousand rupees or two hundred rupees for every day during which such failure continues, whichever is higher, starting with the first day after the due date, till the date of actual compliance,"*

2.1. It is noted from concurrent findings of the both lower authorities that they have imposed the penalty which is in-determinate. As the penalty imposed states that the same is of the quantum of "Rs. 10,000/- or Rs. 200/- per day of the default" whichever is higher. Both the lower authorities while imposing fine have erred in not determining the amount of penalty as "or" figuring in this Section has been treated as conjunctive. The net result is that the penalty even when only one of the penalties i.e. Rs. 10,000/- or Rs. 200/- per day, should have been imposed has remained undetermined till date. Two penalties cannot be imposed, as the statute provides for the higher of the two, through disjunctive "or" as the expression in the provision.

03. Learned AR confronted with the situation, leaves the matter to the discretion of the Bench.

04. This Court finds that an any indeterminate penalty like in the present instance cannot be adjudicated upon. If intention was to impose per day penalty, then easily on day of adjudication it could have been stated, if the same was higher than Rs, 10,000/- or not. Since, the matter is fairly old at this stage, this Court is inclined to setting aside such penalty due to the form in which it has been imposed and giving consequent relief to the party.

05. Appeal allowed with consequential relief.

(Dictated and pronounced in the open Court)

(SOMESH ARORA)
MEMBER (JUDICIAL)

Prachi