CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Zonal Bench At Ahmedabad

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No. 10007 of 2013
(Arising out of OIO-SSP/19/SRT-I/2012 dated 21.09.2012 passed by Commissioner of Central Excise & Service Tax-Surat-I)

Sargam Constructions Private Limited ....**Appellant**
I-G, SIDDHASHILLA APARTMENT, OPP- JIVANBHARTI ROTARY HALL
TIMILIAWAD, NANPURA, SURAT-GUJARAT

VERSUS

C.C.E. & S.T. Surat-I ....**Respondent**
NEW BUILDING...OPP. GANDHI BAUG,
CHOWK BAZAR,
SURAT, GUJARAT-395001

WITH

(i) Service Tax Appeal No. 10006/2013 (Babubhai M Prajapati); (ii) Service Tax Appeal No. 10008/2013 (Manojkumar Lavjibhai Prajapati); (iii)Service Tax Appeal No. 10009/2013 (Mihir B Shah); (iv) Service Tax Appeal No. 10011/2013 (Vinay Kantilal Bhatt); (v) Service Tax Appeal No. 10012/2013 (Dashrath H Patel); (vi) Service Tax Appeal No. 10014/2013 (Haribhai Chakubhai Yadav); (vii) Service Tax Appeal No. 10015/2013 (Rajiv Jayantilal Chauhan)

(Arising out of OIO-SSP/18/SRT-I/2012 dated 21.09.2012 passed by Commissioner of Central Excise & Service Tax-Surat-I)

(Arising out of OIO-SSP/20/SRT-I/2012 dated 21.09.2012 passed by Commissioner of Central Excise & Service Tax-Surat-I)

(Arising out of OIO-SSP/29/SRT-I/2012 dated 21.09.2012 passed by Commissioner of Central Excise & Service Tax-Surat-I)

(Arising out of OIO-SSP/22/SRT-I/2012 dated 21.09.2012 passed by Commissioner of Central Excise & Service Tax-Surat-I)

(Arising out of OIO-SSP/27/SRT-I/2012 dated 21.09.2012 passed by Commissioner of Central Excise & Service Tax-Surat-I)

(Arising out of OIO-SSP/16/SRT-I/2012 dated 21.09.2012 passed by Commissioner of Central Excise & Service Tax-Surat-I)

(Arising out of OIO-SSP/28/SRT-I/2012 dated 21.09.2012 passed by Commissioner of Central Excise & Service Tax-Surat-I)

APPEARANCE:
Shri. S. Suriyanarayanan, Advocate for the Appellant
Shri.Tara Prakash, Assistant Commissioner (Authorized Representative)for the Respondent

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

Final Order No. A/ 12250-12257 /2022

DATE OF HEARING: 16.12.2022
DATE OF DECISION:16.12.2022

RAMESH NAIR

In these appeals there is demand of service tax on Industrial or Commercial Construction Service and penalty under Section 76 and 78 was also imposed.

2. Shri S. Suriyanarayanan, learned counsel appearing on behalf of the appellant, at the outset, submits that they are not contesting the demand of service tax, interest and penalty under Section 78 as they have paid the service tax, interest and 25% penalty. He submits that simultaneous penalty under Section 76 was also imposed which they are contesting against it. He submits that as per the following judgments of this Tribunal, including the High Court judgment, penalty under Section 76 is not maintainable.

- Raval Trading Co. 2016 (42) STR 210 (Guj.)
- Pearl Travels 2020 (37) GSTL 242 (Tri. Amd.)
- Virendra Mujlibhai Parmar-Final Order No. A/12902/2017 dated 04.10.2017

3. Shri Tara Prakash, learned Assistant Commissioner (Authorized Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of records, we find that as stated by learned Counsel, the issue for which they are contesting is the imposition of penalty under Section 76. In this case, the penalty under Section 76 was imposed despite the penalty under Section 78 was also imposed. This issue is no longer res-integra in the light of the jurisdictional High Court in the case of Raval Trading Co. **2016 (42) STR 210 (Guj.)**, wherein it was held that once penalty under Section 78 was imposed, no separate penalty can be imposed under Section 76.

5. In view of the settled position of law, penalty under Section 76 is not sustainable. Accordingly, the same is set aside. Impugned orders are modified to the above extent and appeals are allowed in above terms.

(Dictated and pronounced in the open court)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

Neha