

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
AHMEDABAD
REGIONAL BENCH, COURT NO. 2**

SERVICE TAX APPEAL NO. 313 OF 2012

[Arising out of Order-in-Appeal No. 131/VDR-I/2012 dated 12.03.2012 passed by Commissioner (Appeals), Central Excise- Vadodara]

GANESH INFOTECH

Ganesh Corporate House,
100ft. Hebatpur-Thaltej Road,
Nr. Sola Bridge, off. S G Highway,
Ahmedabad Gujarat -380054

Appellant

Vs.

**COMMISSIONER OF CGST &
CENTRAL EXCISE - Vadodara I**

Central GST Building,
Race Course Circle,
Vadodara, Gujarat-390007

Respondent

Appearance:

Present for the Appellant: Shri Jigar Shah with Shri Amber Kumrawat,
Advocate

Present for the Respondent: Shri A R Kanani, Superintendent (AR)

CORAM:

HON'BLE DR. AJAYA KRISHNA VISHVESHA, MEMBER (JUDICIAL)

HON'BLE MR. SATENDRA VIKRAM SINGH, MEMBER (TECHNICAL)

FINAL ORDER NO. 10824/2025

Date of Hearing: 10/09/2025

Date of Decision: 10/09/2025

SATENDRA VIKRAM SINGH

M/s Ganesh Infotech Ltd, Vadodara (Appellant) are engaged in providing services of Multi System Operator (MSO). They are transmitting signals to Cable Operator who in turn provide cable services to the customers. The department alleged that the appellant did not pay service tax on full amount received on account of charges for transmitting signals to the cable operators during the period from 10.09.2004 to March, 2006. Accordingly, a show cause notice dated 16.12.2009 was issued to the appellant demanding service tax of Rs. 13,33,693/- under proviso to Section 73(1) of the Finance Act, 1994 along with interest under Section 75 and penalty under Section 76, 77 and 78 of the said Act. Proposal for recovering late fee on account of delayed filing of ST-3 returns under Rule 7C of the Service Tax Rules, 1994 was also made.

1.1 The said notice was decided vide Order-In-Original dated 29.11.2010 wherein the Adjudicating authority confirmed the service tax of Rs. 13,33,693/- upon the appellant along with interest. He also imposed equal penalty under Section 78 and separate penalties under Section 76 and 77 of the Finance Act, 1994 besides, a penalty of Rs. 2000/- under Rule 7C of the Service Tax Rules, 1994. Aggrieved, with this order, the appellant filed appeal before the Commissioner (Appeals) who vide impugned order dated 12.03.2012, rejected their appeal and upheld the order passed by the lower authority. Hence, the present appeal.

2. In their appeal, the appellant has prayed for setting aside the impugned order dated 12.03.2012 by dropping the demand of service tax, demand of interest and the penalties imposed under Section 76,77 and 78 and Rule 7C of the Service Tax Rules, 1994. The grounds taken by them are as under:-

- a) Quantification of demand is incorrect. The entire tax has been paid prior to issue of show cause notice. Against the demand of Rs. 13,33,693/-, an amount of Rs. 1,81,053/- was paid while filing ST-3 returns and amount of Rs. 13,32,758/- along with interest of Rs. 8,15,193/- was paid on 16.12.2009. Therefore, they have actually paid excess service tax of Rs. 1,84,576/-.
- b) Interest is not chargeable and penalty is not imposable on them as the service tax itself is not payable by them.
- c) Penalty under Section 76 and 78 are not imposable simultaneously. They cited the following case laws: -
 - The Financers Vs. CCE, Jaipur - 2007 (8) STR 7 (Tri. Del)
 - Commissioner of Central Excise, Ludhiana Vs. Pannu Property Dealer-2009 (14) S.T.R. 687 (Tri. - Del.)
 - Commissioner of Central Excise, Chandigarh Vs. City Motors 2010 (19) S.T.R. 486 (P & H)
 - Commissioner of Central Excise, Chandigarh Vs. M/s Cool Tech. Corporation (Service Tax Appeal No 47 of 2010) (P & H)
 - CCE Vs. M/s First Flight Courier Ltd (Appeal No. 48 of 2010 (P & H))

d) As per the Section 80 of the Act, no penalty is imposable under Section 76,77 and 78 if the appellant proves that there was a reasonable cause for the said failure. As such, waiver from penalty may be granted to the appellant. They relied on the following case laws: -

- ETA Engineering Ltd. vs. CCE, Chennai, 2004 (174) E.L.T 19 (Tri-LB)
- Flyingman Air Courier Pvt. Ltd. vs. CCE 2004 (170) ELT 417 (Tri.-Del.)
- Star Neon Singh vs. CCE, Chandigarh, 2002 (141) ELT 770 (Tri. -Del)
- Avian Overseas Pvt. Ltd. v. Commissioner of Central Excise, BBSR Final Order No. A -103/KOL/09 dated 06.03.2009

e) They are entitled to the benefit of reduced penalty under proviso to Section 78 as they had deposited penalty under Section 76,77 and Rule 7 and 25% of the penalty under Section 78 on 20th January, 2011. Alternatively, as they had already deposited service tax of Rs. 13,32,758/- prior to issue of this show cause notice, SCN for only the balance service tax amount of Rs. 935/- (Rs.13,33,693-Rs.13,32,758) should have been issue them.

3. During argument, learned Advocate for the appellant submitted that the limited issue in this matter is about imposition of simultaneous penalties under Section 76 and 78 of the Finance Act, 1994. He mentions that they have already paid the service tax short paid by them along with appropriate interest. The details of the deposits made by the appellant are available in the appeal papers as well as in their submissions made before the Bench. He therefore, prayed that both the penalties should not imposed simultaneously.

4. Countering the argument, learned AR stated that certain portion of service tax as well as interest is still pending for recovery in the matter. He also mentioned that proviso to Section 78 which provided that "*if the penalty is payable under Section 78, the provision of Section 76 shall not apply*" was inserted in the Finance Act, 1994 w.e.f. 10.05.2008 only whereas the issue

involved in this case is prior to this date. Therefore, the prayer made by the appellant may not be allowed.

5. We have heard the rival submissions. The limited issue before the Bench as prayed by the learned Advocate is whether penalties under Sections 76 and 78 can simultaneously be imposed upon the appellant. We find that no doubt proviso to Section 78 of the Finance Act, 1994 which provided that "*if the penalty is payable under Section 78, the provision of Section 76 shall not apply*" was inserted w.e.f. 10.05.2008 but substantial compliance of service tax liability and interest was already made by the appellant before issue of SCN. Later on, they also paid the remaining penalties. We find that similar issue came up before Hon'ble High Court of Gujarat in the case of M/s Raval Trading Company Vs. Commissioner of Service Tax reported at 2016 (42) STR 210 (Guj.), wherein Hon'ble Court had discussed insertion of Proviso to Section 78. The relevant paras 11, 12 and 16 of the judgment are reproduced below:

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"11. *In view of the nature of this further proviso and the relevant position of the two statutory provisions both pertaining to penalty, we are convinced that the proviso was in the nature of clarificatory amendment and not creating a liability for the first time. Even without the aid to this further proviso to Section 78, one entire plausible view was that the situation envisaged under Section 76 of the Finance Act, 1994, would exclude those cases covered under Section 78 of the Finance Act, 1994. In other words, Section 76 of the Finance Act, 1994, would cover only the cases of non-payment of service tax which are not related to fraud, collusion, wilful misstatement, suppression of facts or contravention of any of the provisions of the said Chapter or the rules made thereunder with the intent to evade payment of service tax since legislature had already provided for penalty in Section 78 in such situations. Thus further proviso to Section 78 made it explicit which was till then implicit.*

12. *Section 76 of the Finance Act, 1994, as is now amended with effect from 14-5-2015 gives further credence to this argument. Section 76(1) as it stands after the said amendment provides that where service tax was not levied or not paid or having been short-levied or short-paid, or erroneously refunded for any reason, other than the reason of fraud or collusion or wilful misstatement or suppression of facts or contravention of any of the provisions of Chapter 5 or the rules made thereunder with an intent to evade the payment of service tax, the person liable shall in addition to service tax and interest also be liable to pay*

penalty not exceeding ten per cent of the amount of such service tax. Thus, by way of this amendment, the statute has ensured that Sections 76 and 78 of the Finance Act, 1994, apply in mutually exclusive areas. In other words, the cases of non-payment of tax by reason of fraud or collusion or wilful misstatement or suppression of facts, etc., would be covered under Section 78 of the Finance Act, 1994, and all cases other than those envisaged under Section 78 would be covered under Section 76 of the Finance Act, 1994.

16. *Under the circumstances, we answer the additional question in favour of the appellant-assessee and delete the penalty under Section 76 of the Finance Act, 1994, while upholding the penalty imposed under Section 78 and other penalties. The tax appeal is accordingly disposed of with no order as to costs."*

5.1 Considering overall intent of the Appellant, we are of the view that their case is squarely covered by the above decision and therefore, we find it fit for waiver of the penalty imposed upon them under Section 76 of the Finance Act, 1994 as the appellant have already paid the penalty under Section 78 of the Finance Act, 1994. Therefore, prayer of the appellant is allowable. Same is allowed.

6. Appeal is allowed to the extent of waiver of penalty imposed on the appellant under Section 76 of the Finance Act, 1994 with consequential relief, if any.

(Dictated & Pronounced in the open court)

**(AJAYA KRISHNA VISHVESHA)
MEMBER (JUDICIAL)**

**(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)**