CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.70673 of 2018

(Arising out of Order-in-Original No.20/COMMISSIONER/NOIDA/2017-18 dated 06/03/2018 passed by Commissioner Principal Commissioner, Central Goods & Service Tax, Noida)

M/s Reliance Infrastructure Ltd. **.....Appellant**

A-2, EPC Division, Sector-24,

Gautam Buddha Nagar,

Noida, Uttar Pradesh

VERSUS

Commissioner, Central Goods & Service Tax, Noida

.....Respondent

APPEARANCE:

Shri Aqeel Z. Sheerazi, Advocate for Appellant
Shri Rajeev Ranjan, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 02 July, 2019
DATE OF DECISION : 02 July, 2019

FINAL ORDER NO. **71303 / 2019**

PER : ANIL G. SHAKKARWAR

After hearing both the sides duly represented by learned advocate, Shri Aqeel Z. Sheerazi appearing on behalf of the appellant and learned AR, Shri Rajeev Ranjan appearing on behalf of the Revenue, we note that the appellants are engaged in provision of various services including Erection Commissioning and Installation etc. Appellant entered into a contract with Rajasthan Sun Technique Energy Pvt. Ltd. for setting up solar power plant.

Appellant received advances amounting to around Rs 53 crores in three installments in November 2011, November 2012 and February 2013. In the month of March 2013 appellants *suo motu* paid service tax amounting to around Rs. 4.87 crore along with interest of around Rs 56.62 lakh in respect of said advances received and filed ST-3 Returns. Revenue initiated investigations against the appellant in the month of May, 2014 and issued a show cause notice dated 21 April, 2017 purposing to confirm the amount already paid by them and appropriate the same and also to appropriate interest already paid with a proposal to impose penalty on the appellant. The said show cause notice was issued by invoking extended period of limitation. Through Order-In-original said demand was confirmed and the amount already paid was appropriated, interest already paid was appropriate and appellant were imposed with penalty of amount equal to service tax under section 78 of Finance Act, 1994 and another penalty of Rs 10,000 under section 77 of the Finance Act , 1994. Aggrieved by the said order appeal is before this Tribunal.

2. Learned counsel for the appellant submits that before payment of service tax *suo motu* and reflecting the same in ST-3 returns, no investigation was initiated against the appellant and therefore since the amount was reflected in ST-3 return, there was no suppression on the part of the appellant and therefore invocation of extend period of limitation is not sustainable. He also submitted that under provisions of Sub-section (3) of section 73 of Finance Act, 1994, show cause notice was not eligible to be issued. Therefore, the question of imposition of penalty did not arise.

3. Learned AR supports the impugned order.

4. Having gone through the record of the case and submissions from both the sides, we note that when the transaction was reflected in ST-3 return and due service tax was paid *suo motu* before issue of show cause notice, there are no grounds for invocation of extend period of limitation. On that count the said show cause notice does not sustain. Further, under sub-section (3) of section 73 of Finance Act, 1994, unless *mala fide* is established, show cause notice cannot be issued in respect of such amount of service tax paid which is paid *suo motu* by the appellant. Therefore in respect of provision of sub-section (3) of section 73 also the show cause notice is not sustainable. We, therefore, set aside the impugned order and allow the appeal without interfering into the service tax along with interest already paid.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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