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REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 30/01/2018

To

Appellant as per address in table below
Respondent as per address in table below

Final Order No. **A/70268/2018-SM[BR]** dated **22/01/2018**

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section **01(5)** of the **Finance Act, 1994 relating to Service Tax Act, 1994.**

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	ST/70448/2016	**P V S Construction Pvt Ltd** B-237 Suraj Mal Vihar EAST DELHI DELHI 110092
		Name and Address of Respondent
2		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Copy To
3Advocate(s) / Consultant(s):

Kartikeya Narain
c/o S.C.Kamra & co,Advocates & Solicitors,21 b/1/17,tashkand Marg,Civil Lines,Allahabad,U.P.

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

10 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

11 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

12 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

13 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

14 C.D.R. 15 Office Copy 16 Second Folder Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No. ST/70448/2016-ST[SM]

(Arising out of Order-in-Original No. 02/Comm./ST/GZB/2015-16 dated 21/10/2015 passed by Commissioner Customs, Central Excise & Service Tax, Ghaziabad)

M/s P V S Construction Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise & Service Tax, Ghaziabad **Respondent**

Appearance:

Shri Kartikeya Narain (Advocate) &
Shri Vijay Kumar Sharma (CA) for Appellant
Shri Gyanendra Kumar Tripathi (AC) AR for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 18/12/2017
Date of Decision : 18/12/2017

FINAL ORDER NO.: 70268/2018

Per: Anil Choudhary

The issue in this appeal is whether the show cause notice have been validly issued, whether the appellant is liable to pay service tax on the amount of security deposit collected from the prospective flat owners which was subsequently handed over to the newly formed flat owners society, and whether they are liable to penalty.

2. The brief facts are that the appellant is a builder of residential flats and had taken suo moto registration with effect from 25/07/2011 under the head 'construction of residential complex service' and 'preferential location

service, as well as internal/external development service. Whe~~ther~~ reas an audit was conducted for the period July, 2010 to March, 2013 by the Revenue officers and it was pointed out by the draft audit report issued sometime in August, 2013 that the appellant have neither submitted any ST-3 Return nor paid the service tax of Rs.21,62,512/- for the period August, 2011 to March, 2012 and Rs.43,00,215/- for the period April, 2012 to March, 2013. On being so pointed out, the appellant deposited the service tax of Rs.21,62,512/- and Rs.43,00,215/- for the period August, 2011 to March, 2012 and April 2012 to March, 2013, respectively, vide challan's as confirmed ~~by cases~~ in O.I.O. The ST-3 Returns for the period April, 2010 to March, 2013 were also subsequently filed. Whereas the appellant had paid the service tax for the period July, 2010 to March, 2013 after the due date no interest on the said delay had been paid by them. The total interest was calculated at Rs.18,42,134/-. Further on being pointed out, the appellant deposited an amount of Rs.14,01,960/- up to 02/06/2014 and further Rs.4,40,275/- appeared ~~before~~ to be ~~the~~ recoverable under Section 75 of the Act. It further appeared that the appellant have collected amount of Rs.14.35 lakhs from their customers, that is flat owners as "Interest Free Management Security," and on the said amount it appeared service tax of Rs.1,77,381/- was payable. It further appeared that appellant have received an amount of Rs.15 lakhs against installation of Electric Meters but no service tax was paid on the same by them. It is also appeared that ST-3 Returns have been filed late, on account of late filing of returns, they were liable to pay late fee under Section 70 of the Finance Act, it further appeared that they have taken registration on 25th July, 2011, whereas as per Rule 4 of the STR, 1994 read with Section 69 of Finance Act, ~~They~~ they were required to take registration within 30 days of commencing business that is August, 2010, ~~that~~ but registered only on 25th July, 2011 and ~~this~~ thus appear to liable for penalty under Section 77(2) of the Finance Act. Accordingly show cause notice dated 18th November, 2014 was issued demanding service tax of Rs.67,14,268/- with further proposal to appropriate the amount already deposited Rs.64,62,727/- along with interest towards which an amount was already paid Rs.14,01,960/- and further demand proposed under Section 70, under Section 77(2) and further penalty was proposed under Section 78 of the Act.

3. The SCN was adjudicated on contest and the proposed demands confirmed and appropriation was allowed for Rs.65,36,887/- towards tax already paid, further interest was also demanded under Section 75 with proposal to appropriate from the amount already deposited.

Further late fee of Rs.1,03,000/- was also demanded under Section 70 of Finance Act read with Rule 7C for late submission of ST-3 Returns and the said amount was also appropriated from the amount already deposited, further penalty of Rs.33,57,134/- was imposed under Section 78 and further penalty Rs.72,000/- under Section 77(2) of the Act for not taking registration prior to July, 2011 with further appropriation of the amount of Rs.72,000/- already paid.

4. Being aggrieved the appellant is before this Tribunal. The Learned Counsel states that there is apparent error in the show cause notice in recognizing the tax is already paid. Actually the appellant had paid a total tax of Rs.87,18,922/- till the date of issue of show cause notice as is evident from the tally of challan's given in the details produced at the time of hearing, which depicts that the appellant have made regular payments since August, 2012 of various amounts regularly wherein the last payment is dated 28th February, 2014 of Rs. 4 lakhs. Further, the appellant have also paid amount towards the interest for late deposit of tax, wherein the first amount of interest was paid on 17th August, 2012 and the last amount was paid on 2nd June, 2014, totaling Rs.14,74,147/-. Further, pending adjudication of the SCN, the appellant had deposited Rs.59,404/- towards fee for late filing of returns

Anr

Rs.72,000/- towards proposed penalty for late registration and also Rs.74,160/- towards service tax on the amount of Rs.15 lakhs collected towards installation of Electric Meters.

5. The Learned Counsel for the Appellant states that no show cause notice was required to be issued as the appellant had paid more tax than the tax proposed in the show cause notice as is apparent on the face of the record. Under such facts and circumstances, the appellant is entitled to benefit of second proviso to Section 73(1) of the Finance Act which provides that where an assessee on being so pointed out or suo moto deposited the tax in dispute or short paid with interest under intimation to the Revenue that is end of the matter and no show cause notice need to be issued. The appellant have further argued that no service tax is payable on the amount of security deposit which they have collected from the flat owners and as per the agreement with the flat owners, have handed over the said amount of Rs.14,35,125/- to the society formed, of the flat owners, which is not disputed. As such amount was collected having character of 'pure agent' and or as a trustee on behalf of the flat owners, no service tax was leviable on the same and accordingly the demand ~~of~~ on this count is fit to be set aside. So far the amount of Rs.74,160/- towards service tax on installation of electric meters is concerned,

although the said amount also has the element of pure agent, but the appellant does not dispute the service tax levied on compounding basis on the same. Further as regards penalty, the appellant states that under the admitted facts that they had been paying regular taxes and further due to inter se dispute between the directors, the Bank had stopped the withdrawal from the account of the appellant company, which resulted in non deposit of service tax. This fact is not disputed. Further it is admitted fact that the appellants have deposited the service tax soon after the operation was allowed by the Bank and they have regularly deposited that tax in arrears and also for the current period, as is evident from the schedule of tax as paid which shows payments every month or alternate month of substantial amounts regularly. Further appellant have also paid interest on the late payments, suo moto, from time to time. Accordingly, the appellant prays for setting aside of the penalties imposed.

6. The Learned A.R. for Revenue have relied on the impugned order.

7. Having considered the rival contentions, I find that there is no case of suppression or contumacious conduct or any attempt on the part of the appellant to evade payment of service tax. Further it is admitted fact that there was disturbance in the normal carrying out of the business due

to freezing of withdrawal in the bank account of the appellant company, which is a reasonable cause for delay in submission of their payment of taxes. And accordingly, I find that the same was reason for delay in submission of the ST-3 Returns as well as other compliances. Accordingly, I set aside the penalty levied under Section 78. So far the penalties of Rs.72,000/- under Section 77(2) for taking service tax registration late, I find that the appellant had suo motu taken registration with the Department. Further it is not the case of Revenue that the appellants had taxable receipts during the period prior to the date of taking registration and as such I hold that no case of penalty under Section 77(2) is made out and accordingly the said penalty is also set aside. So far the penalty/late fee of Rs.1,03,000/- under Section 70 of the Finance Act read with Rule 7C of STR 1994, towards late filing of the returns is concerned, I find that there is reasonable cause for furnishing of returns late due to disturbance in the business, being freezing of withdrawal from the Bank account, but as levy of late fee is not discretionary the same is not interfered with. So far levy of service tax on the amount of security deposit is concerned, I hold that the said amount was received by the appellants having character of pure agent and on behalf of the flat owners as their trustee, which amount have been subsequently given to the society formed of the flat owners and this fact is not disputed. Accordingly, I set aside the demand of Rs.1,77,381/-. Thus the appeal is allowed as indicated herein. The appellant shall be entitled to consequential benefits including refund/adjustment of taxes/interest paid in excess as well as refund of penalty set aside. Accordingly, I direct the concerned adjudicating authority to grant refund/adjustment of the amount paid in excess, ~~as is~~ giving appeal effect of this order, and to refund such excess amount with interest as per rules.

(Dictated & Pronounced in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

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