

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH  
BANGALORE**

Appeal(s) Involved:

**ST/21436/2018-SM**

[Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-  
MSC-059-2018-19 dated 10/05/2018 passed by  
Commissioner of Central Tax (Appeals), BELGAUM ]

**Chloro Control India Pvt. Ltd**

384 Gurshani Industrial Estate,veer Savarkar  
Marg,prabhadevi Mumbai  
MUMBAI - 400025  
MAHARASHTRA

Appellant(s)

**Versus**

**Commissioner Of Central Tax And  
Central Excise, Belgaum**

N0.71, Club Road, Belgaum  
Belgaum - 590001  
Karnataka

Respondent(s)

**Appearance:**

**Mr. Navneet Kumar Arora,CA**

31, Chedda Apartment,  
I.C. Colony, Cross Road No.3,  
Borivali(W),  
Mumbai - 103  
Maharashtra

For the Appellant

**Dr. J. Harish,  
Dy. Commissioner (AR)**

For the Respondent

Date of Hearing: 30/11/2018

Date of Decision: 30/11/2018

**CORAM:**

**HON'BLE MR. S.S GARG, JUDICIAL MEMBER**

**Final Order No. 21822 / 2018**

**Per : S.S GARG**

The present appeal is directed against the impugned order dated 10.5.2018 passed by the Commissioner (A) whereby the Commissioner (A) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are registered under the service tax for providing service under the category of renting of immovable property service. A preventive case was booked on the appellant, it was observed that they have rented out their plant premises to M/s. Capital Control India on monthly rental basis and are collecting rent amount but they did not pay service tax on the said rent collected and also not filed ST-3 returns. Thereafter, a show-cause notice dated 3.7.2015 was issued to the appellant demanding service tax of Rs.21,04,290/- along with proposal for recovery of interest and imposition of penalty. Joint Commissioner after following due process, vide Order-in-Original dated 21.7.2016 confirmed the demand along with interest and imposed penalty of Rs.10,000/- under Section 77(2), late fee of Rs.1,33,400/- under Rule 7C and equal penalty under Section 78 of the Act. Aggrieved by the said order, appellant filed appeal before the Commissioner (A), who rejected the same. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Learned consultant appearing on behalf of the appellant submitted that the impugned order is harsh as the appellant on

account of complete ignorance of fact could not deposit the tax. He further submitted that the appellant have paid the entire tax and also paid late fee for the delay of payment of tax because the appellants were passing through financial crunch. He further submitted that there was no intention on the part of the appellant to evade the payment of tax as the appellant have shown the tax liability in their balance sheet. He also submitted that appellants have paid the entire tax and 25% of the penalty under Section 78 of the Finance Act, 1994 but there was some delay in the payment of interest. He further submitted that a lenient view be taken since he has paid the tax, interest and remaining 25% penalty should be dropped.

5. On the other hand, the learned AR defended the impugned order and submitted that it is a fact that the appellant have collected the service tax from the tenants and has not deposited the same which itself shows that there was suppression on the part of the appellant to evade payment of tax to the Government exchequer. He further submitted that the appellant is not entitled to the benefit of reduced penalty under Section 78 of the Finance Act, 1994 because he has not complied with the order of the original authority in toto and has not paid the interest within 30 days from the date of adjudication.

6. After considering the submissions of both the parties and perusal of the material on record, I find that it is a fact that the appellant had recovered the service tax from the lessee/tenant but did not deposit the same in the Government exchequer and kept it with themselves. Further, I find that the appellant have not filed the requisite returns in time, therefore, the department could not ascertain the tax liability of the appellant. Further, I find that the appellant have not complied with the order of the adjudicating authority in toto and has paid only the tax and the 25% penalty but subsequently, after some delay, paid the interest also. Therefore, they are not entitled to the benefit of reduced penalty under Section 78 of the Finance Act, 1994. In view of these facts, I do not find any merit in the appeal of the appellant, which is dismissed by upholding the impugned order.

(Operative portion of the Order was pronounced  
in Open Court on **30/11/2018**)

**S.S GARG**  
**JUDICIAL MEMBER**

rv...