

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

Appeal(s) Involved:

**ST/20673/2018-SM**

[Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-  
MSC-165-2017-18 dated 16/01/2018 passed by  
Commissioner of Central Tax , BELGAUM (APPEALS) ]

**Gajanan Maharudra Vasedar**

H No 1620 Basaveshwar Circle Mahadev Galli  
Nipani  
BELAGAVI  
KARNATAKA  
591237

Appellant(s)

**Versus**

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

N0.71, Club Road, Belgaum  
Belgaum  
Karnataka  
590001

Respondent(s)

**Appearance:**

**Mr. Subramanya , CA**

SHEKAR & YATHISH  
CHARTERED ACCOUNTANT  
13/14, 28TH CROSS, 2ND MAIN ROAD,  
JAYANAGAR 7TH BLOCK,  
BANGALORE  
KARNATAKA  
560082

For the Appellant

**Mr. K. Murali, Superintendent, AR**

For the Respondent

Date of Hearing: 27/12/2018

Date of Decision:31/12/2018

**CORAM:**

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

**Final Order No.21950/2018**

**Per : S.S GARG**

The present appeal is directed against the impugned

order dated 09.02.2018 passed by the Commissioner (Appeals) whereby the Commissioner (A) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellant is a consulting engineer and contractor providing construction services to Government as well as private establishments. A SCN dated 08.03.2015 was issued to the appellant proposing to demand and recovery of Service Tax of Rs.6,96,431/- along with interest and also imposed equal amount of penalty under Section 78 of the Finance Act. Aggrieved by the said order the appellant filed appeal before the Commissioner on the ground that he has not collected the Service Tax from his customers for the period from 2013-15. The appellant has paid the Service Tax liability along with interest and late fee. Further, the liability for the period from 2007-12 was paid through VCES. The learned Commissioner, after considering the submissions of the appellants, rejected the appeal and upheld the penalty.

3. Heard both sides and perused the records of the case.

4. Learned consultant appearing for the appellants submitted that the impugned order imposing penalty under Section 78 is not sustainable in law as the same has been

imposed contrary to the binding judicial precedent. He further submitted that the appellants opted for VCES and paid the Service Tax as per the said scheme. He further submitted that the appellant was not aware of the tax liability and therefore he had not taken the Service Tax registration and not filed the ST-3 Return. During the investigation, it was found that he has not paid the Service Tax and thereafter the appellant paid the Service Tax along with interest and late fee before the issuance of SCN. He further submitted that once the appellant has paid the Service Tax along with interest before the issue of SCN then the Department should not have issued the SCN as is provided under Section 73(3) of the Finance Act. He further submitted that admittedly SCN demanding the penalty of Rs.6,96,431/- was issued on 08.03.2015 whereas the payment of Service Tax and interest was made on 07.03.2015 and the details of the payment is also recorded in the SCN issued by the Department. In support of his submission he relied upon the following decisions:

***(i) CCE & ST, LTU, Bangalore Vs. ADECO Flexione Workforce Solutions Ltd, 2012 (26) STR 3 (Kar.)***

***(ii) Bhoruka Aluminium Ltd. Vs. Commr. of C.Ex. & S.T., Mysore, 2017 (51) STR 418 (Tri. Bang.)***

***(iii) People Consultants Vs. Commr. of C.Ex., Cus. &***

***S.T., Cochin, 2017 (4) GSTL 313 (Tri. Bang.)***

***(iv) ITC Infotech India Ltd. Vs. Commr. of C.Ex., S.T. & Cus., Bangalore-II, 2015 (39) STR 818 (Tri. Bang.).***

***(v) Commr. of S.T., Bangalore Vs. C Ahead Info technologies India Pvt. Ltd. , 2017 (47) STR 125 (Kar.).***

5. On the other hand, the learned AR defended the impugned order and submitted that the penalty under Section 78 has rightly been imposed as the appellants have suppressed the material fact with intent to evade payment of tax. He further submitted that as per the Original Authority order, it is observed that the contract value is inclusive of Service Tax. Therefore, the appellant has collected the Service Tax and not paid the same. To counter this argument, the learned consultant for the appellant has produced on record the works contract before me and perusal of the works contract shows that it is not inclusive of Service Tax therefore the finding recorded by the Original Authority is factually incorrect.

6. After considering the submissions of both the parties and perusal of the material on record, I find that in the present case, it is a fact that the appellant has paid the Service Tax and interest before the issue of SCN and therefore the issuance of

SCN itself, for demanding penalty under Section 78, is not warranted under law. Further, I find that the decisions relied upon by the appellant squarely covers the case of the appellant. Further, I note that the perusal of the works contract clearly shows that the contract value is not inclusive of Service Tax because nowhere in the works contract, it is stated that the contract value is inclusive of Service Tax. To this extent, the finding of the Original Authority and Appellate Authority is factually incorrect. Therefore, keeping in view the ratio of the above decisions cited by the appellant, I am of the view that the impugned order imposing penalty under Section 78 is not sustainable in law therefore I set aside the penalty by allowing the appeal of the appellant with consequential relief, if any.

(Order was pronounced  
in Open Court on **31/12/2018**)

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

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