

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**

SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

**SINGLE MEMBER BENCH  
COURT NO. I**

**APPEAL NO. ST/60917/2018-ST[SM]**

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-698-2018 dated 20.03.2018 passed by the Commissioner, CGST (Appeals), Ludhiana]

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**M/s Shanks Security Services : Appellant(s)**

**VS**

**C.C.E. & S.T., Ludhina : Respondent(s)**

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Appearance:

Present for the Appellant(s): Mr. Gagan Kohli, Advocate

Present for the Respondent(s): Mr. Atul Handa, A.R.

**CORAM:**

**Hon'ble Mr. Ashok Jindal, Member (Judicial)**

**Date of hearing/decision: 14.12.2018**

**FINAL ORDER NO. 63599/2018**

***Per Ashok Jindal :***

The appellant is in appeal against the impugned order seeking immunity from the penalty imposed on them under Section 78 of The Finance Act, 1994.

2. The facts of the case are that the appellant provided taxable services namely security service to the various organizations and did not disclose to amount of service provided by them. It was only come in the knowledge of the Department through Form-26AS of Income Tax Act/Rules. Thereafter, an investigation was conducted and it was found that the appellant is liable to pay the service tax to the tune of Rs. 19,87,177/- (Short Payment of Service Tax). During

the course of investigation, the appellant paid an amount of Rs. 3 lakhs towards the liability and promised to pay the rest of the amount very shortly but the said amount was not paid by them. Thereafter, a show cause notice was issued to the appellant to demand the service tax on the account of short payment of service tax along with interest and to impose various penalties under Sections 76, 77 and 78 of the Act. The matter was adjudicated. The demand proposed in the show cause notice was confirmed along with interest and penalty under Section 78 equal to the amount of service tax was also confirmed. Penalties under Section 77 were also imposed on the appellant. The appellant by way of this appeal is seeking immunity from the penalty Section 78 of the Act.

3. Ld. Counsel for the appellant submits that the person who was dealing the matter was mentally retarded and the treatment was going on, that was the reason they could not give the correct figures of service provided by them and there was no malafide intention to evade payment of service tax; therefore, the immunity from the penalties imposed under Section 78 of the Act be granted. He further submits that as per Section 78 (amended as on 14.05.2015), the maximum penalty is imposable to the tune of 50% to the service tax.

4. On the other hand, Ld. A.R. reiterated the findings in impugned order.

5. Heard the parties and considered the submissions.

6. On careful consideration of the submissions made by both the sides, I find that in this case, unless and until, the investigation could have been started, the short payment of service tax could not be

detected. The appellant having malafide intentions did not pay service tax in time, which has been collected by them from the service recipient. Moreover, the provisions of Section 78 w.e.f. 14.02.2005 are not applicable to the facts of this case as the appellant did not pay the service tax along with interest and 50% penalty within 30 days of communication of the adjudication order; therefore, the appellant did not require any immunity from this Tribunal for reduction of penalty under Section 78 of the Act. In that circumstance, the appellant is not entitled for any immunity for reduction of penalty under Section 78 of the Act. Therefore, I do not find any infirmity in the impugned order, the same is upheld.

7. In result, the appeal is dismissed.

*(Dictated and pronounced in the open court)*

**(Ashok Jindal)**  
**Member (Judicial)**

RAS'