CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

Service Tax Appeal No. 53553 of 2018-SM

(Arising out of order-in –appeal No. IND-EXCUS-000-APP-251/18-19 dated 27.07.2018 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Indore).

M/s Kailtech Test & Research Centre Pvt. Limited **Appellant**
Plot No. 141, Electronic Complex
Pardeshipura, Indore.

Versus

Commissioner, Customs, Central Excise & **Respondent**
CGST, Post Box No. 10
Manik Bagh Palace
Indore (M.P.)

Shri Krishan Garg, C. A. for the appellant
Ms. Tamanna Alam, Authorised Representative for the Respondent

Date of Hearing/ Decision: 28.02.2019

Coram:

Hon'ble Anil Choudhary, Member (Judicial)

Final Order No. 50406/2019

Per: Anil Choudhary:

The issue involved in this appeal is whether penalty under Section 78 was rightly imposed under the Finance Act.

2. Admitted fact is that the appellant are a testing and research centre. They are registered with the Service Tax Department for providing Scientific & Technical Consultancy service to their clients. The appellant have been paying taxes and filing returns in time. During the course of

inspection on 09.09.2016 it was noticed that service tax liability for the period October, 2015 to March, 2016 worked out to Rs. 35,99,729/- out of which the appellant had deposited Rs. 26,83,183/- and service tax amounting to Rs. 9,16,546/- was yet to be paid. Similarly, for the period April, 2016 to August, 2016 tax worked out to Rs. 21,97,240/- was unpaid. On scrutiny of service tax return for the period April to September, 2016, it was seen that there is an outstanding amount of Rs. 21,97,240/-. Accordingly, for the alleged default in timely payment of tax and filing of return, show cause notice dated 01.06.2017 was issued for demanding of service tax of Rs. 32,32,645/- for the period February, 2016 to August, 2016 with proposal to appropriate similar amount already deposited with proposal to levy of interest and to appropriate Rs. 2,46,196/- already paid on account of interest and further proposal to levy penalty under Section 78 of the Act read with Rule 7C of the Service Tax Rules, 1994. The show cause notice was adjudicated vide order-in-original dated 16.11.2017 by the Assistant Commissioner and he confirmed the proposed demand alongwith appropriation of demand. Further, demanded interest of Rs. 2,46,196/- alongwith appropriation of the amount already paid towards penalty under Section 70 read with Rule 7C of Service Tax Rules, 1994 for delayed submission of ST-3 returns for the half year ending March, 2016 and September, 2016 and also appropriated the amount already paid. Further, the Asstt. Commissioner had not imposed penalty under Section 78, observing that there was bonafide financial hardship. Further, the appellant also remitted service tax alongwith interest before issue of show cause notice. Further, observed that appellant has made proper disclosure in returns for the year 2015-16 and 2016-17 in their books of accounts and their financial statements.

3. Being aggrieved, appellant preferred appeal before the Commissioner (Appeals) who vide the impugned order-in-appeal observed that the adjudicating authority has failed to analyse that mere showing details in balance sheet / financial statements would save an assessee from their intent of evasion of service tax, had it been so, the mandatory penalty provisions of reducing the penalty to 50% of the tax demand confirmed, in cases where detail of transactions are available in the records was impossible and accordingly further penalty under Section 78 is mandatory once the aspect of suppression of facts, mis-declaration etc., is made out.

4. Learned Counsel for the appellant states that penalty was not imposable as there is no element of suppression of facts or mis-declaration on the part of the appellant. It is admitted fact that they were paying tax regularly and have deposited the arrears of tax within a fortnight of so pointed out by the Revenue. The appellant was during the relevant time under financial crunch of fund and there is no case of deliberate intent to evade tax. Accordingly, he prayed for setting aside the penalty.

5. Learned Departmental Representative for the Revenue relied upon the impugned order.

6. Having considered the rival contentions, I find that penalty on the allegation of deliberate delay and on the failure of the appellant is imposable under Section 76 of the Finance Act. Penalty under Section 78 is attracted in case of any short levy etc. on account of fraud, collusion, wilful mis-statement or suppression of facts including the contravention of the provisions of the Act or rules. I find that such facts are not available in the facts of the present case. Accordingly, I allow the appeal and set aside the penalty under Section 78. The appellant is entitled to consequential benefits, as per law.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant