CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench – Court No. – I

Service Tax Appeal No. 30131 of 2019

(Arising out of Order-in-Original No. GUN-EXCUS-000-COM-010-18-19-ST dt.13.11.2018 passed by Commissioner of Central Tax, Guntur)

M/s KRS Erectors Pvt Ltd
305, Highway Towers, NH-5, Tadepalli,
Guntur, Andhra Pradesh – 522 501 **......Appellant**

VERSUS

Commissioner of Central Tax
Guntur - GST
CR Buildings, Kannavarithota,
Guntur, Andhra Pradesh – 522 004 **......Respondent**

and

Service Tax Appeal No. 30130 of 2019

(Arising out of Order-in-Original No. GUN-EXCUS-000-COM-010-18-19-ST dt.13.11.2018 passed by Commissioner of Central Tax, Guntur)

K. Bhaskar Rao, Director
M/s KRS Erectors Pvt Ltd, 305, Highway Towers,
NH-5, Tadepalli, Guntur, AP – 522 501 **......Appellant**

VERSUS

Commissioner of Central Tax
Guntur - GST
CR Buildings, Kannavarithota,
Guntur, Andhra Pradesh – 522 004 **......Respondent**

Appearance
Shri C.P. Rao, Consultant for the Appellant.
Shri K. Raji Reddy, AR for the Respondent.

Coram: HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)
HON'BLE MR. ANGAD PRASAD, MEMBER (JUDICIAL)

FINAL ORDER No. A/30157-30158/2025

Date of Hearing: 16.01.2025
Date of Decision: 05.05.2025

[Order per: A.K. JYOTISHI]

M/s KRS Erectors Pvt Ltd (hereinafter referred to as the appellant) are in appeal against the Order-in-Original dt.13.11.2018 (impugned order) passed by the Commissioner of Central Tax (Adjudicating Authority) vide Appeal No. ST/30131/2019, whereby, the demand of service tax as proposed vide SCN dt.06.04.2018, has been confirmed along with equal penalty under section 78 of the Finance Act, 1994. Mr. K. Bhaskar Rao, Director of the appellant company, has also come in appeal against the same OIO vide Appeal No. ST/30130/2019 to the extent of imposition of penalty of Rs.1,00,000/- under section 78A of the Act by the Adjudicating Authority.

2. The brief facts of the case are that based on certain intelligence, investigation was initiated by way of summons dt.29.10.2015 by the department seeking certain documents/ information from the appellant. The department, based on said documents and statement dt.20.11.2015 of Mr. K.V. Vasantha Rao, Senior Manager and Authorized Signatory of the appellant, inter alia, felt that the appellant had charged/received consideration for providing taxable service but failed to remit service tax and also failed to file ST3 return for the period April, 2015 to September, 2015 on or before the stipulated date as per Rules. It was also alleged that appellant had also failed to pay the service tax already collected, which resulted in short payment of service tax for the period April, 2014 to March, 2015. Further, it was also noted that for the period October, 2015 to March, 2016, the appellant had claimed ineligible exemption resulting in non/short payment of service tax to the tune of Rs.35,39,391/- during the period April, 2015 to September, 2015. In all, it was alleged in the SCN that the appellants were providing Manpower Supply service to M/s Power Mech Projects Ltd, Vijayawada, however, they have not paid/short paid service tax to the tune of Rs.7,16,02,680/- for the period 2015-16 (up to September). It was also alleged that extended period in terms of proviso to section 73(1) of the Finance Act was applicable in the facts of the case and penalty under section 78 on appellant is also imposable. Similarly, penalty under section 78A is invokable on Shri K. Bhaskar Rao, Director of the Appellant.

3. On adjudication, the Adjudicating Authority has, inter alia, observed that there is no dispute as regards classification and value of taxable service or quantum of service tax payable. The Adjudicating Authority, in fact, noted that the appellant has already paid the entire service tax liability as mentioned in the SCN including applicable interest before the issue of the said notice, except to the extent of a small amount of differential interest, which also, as per the appellant, had already been paid before the issue of the SCN. Therefore, the Adjudicating Authority has only examined the issue of invocation of proviso to section 73(1) of the Finance Act, 1994, and

proposal for imposing penalty under section 78. After going through various submissions and facts on record as well as relying on the judgments of the Coordinate Benches in the case of Master Marine Services P Ltd [2014 (35) STR 79 (Tri-Mumbai)] and Ketan Engineering Services Pvt Ltd Vs CCE & ST, Surat [2014 (36) STR 196 (Tri-Ahd)], held that in view of the fact that there has been collection of service tax, failure to pay service tax by due date, failure to file returns by due date, failure to declare correct details in the ST3 returns filed which are similar to the factual matrix of the cases relied upon by him where invocation of extended period or imposition of penalty was held valid and therefore, invocation of proviso to section 73(1) in the present case was also justified. He accordingly imposed penalty under section 78 but refrained from imposing any penalty under section 76 in view of provisions under section 76 & 78 of the Finance Act, 1994 as amended by Finance Act, 2015. He also imposed penalty under section 78A on Shri K. Bhaskar Rao.

4. Insofar as the appellant's submission that they have paid entire service tax along with interest before issue of SCN and therefore, there was no legality for issuance of SCN or for penalty under section 78, apart from distinguishing the case laws cited by the appellant, inter alia, he observed that the appellant had collected service tax but failed to deposit the tax by the due date and failed to file return by due date, which amounts to suppression of facts and therefore, in view of the provisions of section 73(4) and once suppression is established, the provisions of section 73(3) are not applicable. Therefore, on this ground also, he did not find merit in the arguments of the appellant that issuance of SCN or penalty was not warranted in the facts of the case.

5. Insofar as the penalty under section 78A on Mr. K. Bhaskar Rao, Director of the appellant company is concerned, he has relied on the statement of one Mr. K.V. Vasantha Rao, Senior Manager of the appellant company dt.10.03.2018, wherein, inter alia, he stated that Mr. K. Bhaskar Rao used to give the direction with regard to payment of service tax and monitor and the fact that in his reply Mr. K. Bhaskar Rao has not adduced any substantiation against the imputations in the SCN and therefore, he held him responsible for failure to pay the collected service tax amount by the appellant company and therefore, liable for penalty under section 78A for his

involvement in the evasion of service tax and failure to discharge service tax liability despite collection of the same from the service recipients.

6. Learned Consultant for the appellant, at the very outset, submits that they are not contesting the confirmation of demand of Rs.7,16,02,680/- and its appropriation as well as appropriation of applicable interest already paid thereon amounting to Rs.69,02,146/- though the appropriation has only done to the extent of Rs.61,27,459/- by Adjudicating Authority. What they are contesting is the imposition of penalty of Rs.7,16,02,680/- under section 78 of the Finance Act, 1994 on the appellant as also penalty of Rs.1,00,000/- on Mr. K. Bhaskar Rao, Director, under section 78A.

7. His main ground of argument is that all dues along with interest were discharged much before the issuance of notice, which is not being disputed by the Adjudicating Authority except for some reconciliation issue and therefore, they are clearly covered within the provisions of section 73(3) and there was no need for issuance of SCN as also further imposition of fine, penalty, etc. Further, the allegations of collection of consideration or service tax and not depositing the same, non-disclosure of gross consideration with intention to evade payment of tax, wrongly availing exemption with intention to evade payment of tax etc., were invoked with specific purpose of imposition of penalty under section 78 without having any basis. He submitted that there is no evidence in the SCN that the appellants have collected and not deposited the service tax. Further, the question of non-disclosure of gross consideration does not arise as no declaration itself was made before filing ST3 return on 04.12.2015 as also the revised return in January, 2016, when reconciled amount was declared. Similarly, as far as issue of availing exemption, which they had initially claimed in their ST3 return, it was a genuine and bonafide error on their part, which was rectified suo moto by them and applicable service tax and interest was also discharged and a revised return was filed. There is nothing on record that the said mistake was pointed out by the department and correction was made only thereafter. In fact, according to the learned Consultant, the appellants have paid the said amount also suo moto on realizing later that they might not be eligible for the said exemption. He also points out that if a view is taken that every error made in the ST3 return is with an intention to evade payment of tax, attracting penalty under section 78, then it would

render otiose the entire provision for rectification of errors and provision for filing revised returns, as provided under Rule 7B of the Service Tax Rules.

8. He has relied on various case laws in support that the words 'suppression' etc., are required to be construed strictly as held by Hon'ble Supreme Court in the case of Continental Foundation Joint Venture [2007 (216) ELT 177] (Para 10 & 12) and that mere a omission not accompanied by intention to evade duty is not suppression. It is on record that appellants were in the process of discharging their liabilities by the time investigations started, which demonstrated their intention to pay their taxes. Therefore, the assertion that while they had paid substantial amount even before the start of investigation itself they would have omitted to pay remaining amount but for the initiation of investigation of the DGCEI, is only a presumption on behalf of the department. He has also relied on the judgment of Hon'ble Supreme Court in the case of Uniworth Textiles [2013 (288) ELT 191 (SC)] (Para 12) where it was held that mere non-payment of duties cannot be considered equivalent to collusion or willful misstatement or suppression of facts. Insofar as the reliance of Original Authority on the case of Master Marine Services P Ltd (supra), he submits that this decision, on appeal, was already stayed by the Hon'ble Mumbai High Court as reported in [2016 (41) STR J258 (Bom)] nearly 3 years before the impugned order was passed by the Adjudicating Authority wherein he relied on said judgment. Thus, this is bad in law.

9. On the other hand, learned AR reiterates the observations made by the Adjudicating Authority in the impugned order and case laws relied upon by him and submits that in the facts of the case, the imposition of penalty, both on the appellant as well as on Mr. K. Bhaskar Rao, are correct. It is his main argument that the entire amount of service tax of Rs.7,16,02,680/- was paid only after initiation of investigation on 29.01.2015 and value of Rs.2,52,81,365/- was suppressed while filing returns and applicable tax was not paid. Therefore, had the investigation not taken place, the irregular claim of exemption in their return would have gone unnoticed. According to the learned AR, there is a clear case of suppression of taxable values warranting issue of SCN invoking extended period and the fact that the appellant has also paid 25% of the penalty imposed after adjudication,

though ‘under protest’ within 30 days of passing order which shows that the appellant intended to close the matter by paying the penalty.

10. Heard both sides and perused the records. Since both the appeals are interlinked, we propose to take both appeals together for disposal.

11. At the very outset, it is made clear that the appellants are not pressing to contest the demand of service tax or interest thereon as demanded and confirmed in the impugned order but are only contesting the imposition of penalty equivalent to tax involved during the period April, 2015 to September, 2015 under section 78 and also penalty under section 78A. We find that though it is a fact that appellant could not pay the service tax during the above period regularly, however, they had paid nearly 40% of tax dues by 30.10.2015 itself. The first summons was received on 29.10.2015 on the subject of non-payment of tax for preceding half year tax period (April to September, 2015). While they participated in the investigation, in the meanwhile, they had paid the rest of their dues and the ST3 return for the period April, 2015 to September, 2015, which was due on 21.10.2015, was also filed on 04.12.2015 with a gap of about 40 days and in fact, a further revised ST3 was again filed on 21.01.2016 incorporating the left out taxable value initially claimed as exempted value and tax on account of such inadmissible exemption. All these actions are apparently taken suo moto and not because of any direction to do the same by any authority or department, who were basically reconciling the difference noticed by them in the Income Tax Returns and relevant ST3 filed by them based on documents, information provided by the appellant themselves.

12. We find that there is no dispute regarding classification, valuation or provision of service, etc. It is also a fact that they had not paid the service tax on the due dates but it is also an admitted fact that they had made good the non-payment of service tax along with applicable interest subsequently, even before the issue of SCN. We also find force in the argument that while the total interest has been worked out as Rs.69,02,146/-, which incidentally also proves that the entire demand was already paid before hand, the appropriation was only on Rs.61,27,459/-. This anomaly has been on account of the fact that while the total interest payable has been computed as Rs.4,97,500/-, as per para 7.1 of the SCN, the department has

appropriated only Rs.2,86,028/-, whereas, the appellant had paid additional amount of Rs.3,62,364/- on 07.12.2015 towards the balance interest liability and therefore, the entire applicable interest also stood paid by the appellant. In fact, the Adjudicating Authority has discussed this issue at Para 30.1 of impugned order where direction was given to verify the claimed payment of interest of Rs.3,62,364/- on 07.12.2015 towards balance interest liability and if found correct that would also stand appropriated. Nothing has been brought on record by Revenue that this claim was not found correct. Therefore, it is apparent that the entire amount of short paid tax along with entire amount of applicable interest had already been paid and in fact, they have paid little bit extra in respect of applicable interest. Therefore, the short question is whether the SCN issued by invoking proviso to section 73(1) and not allowing them the provision under section 73(3) is correct or otherwise in the given factual matrix.

13. While on one hand, the appellants are relying on various case laws including the judgment of Hon'ble Karnataka High Court in the case of CCE & ST, LTU, Bangalore Vs Adecco Flexione Workforce Solutions Ltd [2012 (26) STR 3 (Kar.)] and the decision of Coordinate Bench in the case of Sunita Tools Pvt Ltd Vs CST, Mumbai-II [2015 (37) STR 644 (Tri-Mum)] in support that once the appellants have discharged the service tax liability along with interest thereon, either on his own account or on being pointed out by the department, there is no need to issue SCN. They have also relied on various other case laws as under:-

a) CCCE & ST, Guntur Vs OTS Advertising Pvt Ltd [2013 (32) STR 303 (Tri-Bang)]
b) CCE, Mangalore Vs Shantha Satellite Vision [2009 (13) STR 76 (Tri-Bang)]
c) Majestic Mobikes Pvt Ltd Vs CST, Bangalore [2008 (11) STR 609 (Tri-Bang)]
d) CST, Bangalore Vs Motor World [2012 (27) STR 225 (Kar)]

14. We find that the Adjudicating Authority has, at para 23 of the impugned order, observed that appellant has collected service tax for the period April, 2015 to September, 2015 but failed to deposit the same. However, from the SCN, we do not find any evidence or allegation that they had not only charged/collected consideration but in fact also collected

service tax from the recipient of the service provided by them. Thus, to allege that they had also received or collected service tax from the recipient and not paid to Government without any tangible evidence on record is not correct and therefore, it is not sustainable. Thus, charge to the extent that they had charged/collected consideration for service and they did not discharge applicable service tax, by due date, is an admitted fact but their having specifically collected service tax from the recipient, which they failed to pay to Government is not substantiated on record in terms of any document. In para 4 of SCN, Department, based on all documents submitted by appellant and statements recorded, has alleged that appellant had rendered taxable service and charged/received consideration but failed to remit service tax. Thus, though the intelligence on basis of which investigation was initiated referring to the presumption that they had collected service tax but did not deposit all service tax, the conclusion at para 4 is only regarding receipt of consideration and collection not service tax through their recipient.

15. The Revenue has also highlighted in the SCN that the appellants would not have paid the service tax had there been no investigation initiated by the department. This is apparently a presumption as what is also an admitted fact that substantial amount was already paid by the appellant even before the initiation of investigation. Para 12 of the impugned order explains the demand, wherein, inter alia, it is admitted that they had paid an amount of Rs.4,36,38,470/- out of the total service tax liability of Rs.11,17,01,759/- for the period April, 2015 to September, 2015 and therefore, the demand was restricted only to Rs.6,80,63,289/- for the period April, 2015 to September, 2015 and Rs.35,39,391/- for the period July, 2015 to September, 2015, taking the total demand to Rs.7,16,02,680/-. It is also an admitted position that entire amount of demand along with applicable interest was paid voluntarily by the appellant during the course of investigation itself and according to Revenue only a small amount of Rs.5,63,215/- was recoverable towards interest, which, in any case, has been contested by the appellant for which a reconciliation has been ordered in the impugned order itself. Thus, the submission that they have paid the entire amount only because of the initiation of investigation is not correct as they are registered under Service Tax and have been filing periodical ST3 returns, though they have failed on certain occasions to file the return by

the due date or to discharge the service tax liability by the due date. Therefore, the issue is whether this is a mere default in filing of ST3 returns or delay in payment of service tax, per se, by the due date or a deliberate attempt by appellant intended to evade payment of service tax.

16. It is an admitted position that the investigation started by issuing of summon on 29.10.2015 seeking certain documents and thereafter, followed by recording statement on 20.11.2015, on 08.01.2016 and on 10.03.2018. On 20.11.2015, Mr. K.V. Vasantha Rao, inter alia, admitted that he was responsible for finalization of Accounts, Service Tax and Income Tax Returns and thereafter, made certain clarifications with regard to non-payment of service tax in terms of difference of value in ST3 return and Income Tax return for the year 2014-15 for which, he gave explanation that by the time of filing ST3 return for the HYE March, 2015, they had not finalized the accounts but they filed ST3 return as per Trial Profit & Loss account and later due to work pressure he was unable to pay differential duty and therefore, did not file the revised ST3 return and that in September, 2015, they paid all service tax dues with interest and filed Income Tax return for the FY 2014-15. Subsequently, for non-payment of applicable service tax and non-filing of ST3 return for the HYE September, 2015, he said that he had not reconciled the account for HYE September, 2015 but had paid continuously service tax payments month wise tentatively and sought certain time to reconcile accounts on various sites and pay the pending service tax liability and file the return and submit the ST3 return with documents.

17. Further it is also observed that based on scrutiny and reconciliation of documents and statements that the appellants have charged to have rendered taxable service and charged/received consideration but failed to remit service tax and to file the ST3 return for the period April, 2015 to September, 2015 on or before stipulated time and it also appeared to the department that appellants failed to pay all the collected service tax. There is no explanation as to on what basis the department came to the conclusion that they had actually collected service tax but had not paid to the Government. This is crucial as most of the case laws relied upon by the Adjudicating Authority for invoking extended period are hinging on the fact that they had collected service tax but not paid to the Government. In fact,

the return filed by the appellant on 04.12.2015 was also scrutinized along with Income Tax return for FY 2014-15, copies of Agreements, sample copies of Invoices, wherein it was observed that during the FY 2014-15, there was a differential value of Rs.3,11,86,300/- and also for the period 2015-16, the applicable service tax was not paid and in that connection, the statement dt.08.01.2016 was recorded, wherein, again Mr. K.V. Vasantha Rao explained the difference of value in ST3 return and Income Tax return for FY 2014-15 and explained the reasons for the difference and admitted that while they have paid certain service tax and also admitted that they had not failed to report the tax paid on differential value in the ST3 return filed for the period HYE September, 2015 and admitted that it was a lapse on their part and this would get rectified by filing the revised return.

18. Therefore, it is apparent that they have clearly not paid certain service tax during 2015-16, as and when due, and have also filed the ST3 return late on one occasion i.e., for HYE September, 2015. However, what is important to note is that there is provision in the Finance Act that if there is any error or omission, a revised ST3 return can be filed. As per Rule 7B, an assessee may submit revised return in form ST3 to correct a mistake or omission within a period of 90 days from the date of submission of return under Rule 7 and it has got even statutory implication by virtue of explanation which provides that where an assessee submits a revised return, the relevant date for the purpose of recovery of service tax, if any, under section 73 of the Act shall be the date of submission of such revised return. As per Rule 7C, where the return prescribed under rule 7 is furnished after the date prescribed for submission of such return, the person liable to furnish the said return shall pay to the credit of the Government of India, for the period of delay at certain prescribed rate. Similarly, in terms of section 70 of the Finance Act, the returns may be furnished with late fee for the delayed furnishing of return. Section 75 provides for payment of interest in respect of failure to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest at such rate not below ten per cent and not exceeding thirty-six per cent per annum. Therefore, conjoint reading of all these provisions would indicate that there could be occasions when the assessee may not be able to file service tax return by due date or able to remit service tax by due date but

can cure the same subject to payment of interest on delayed payment, late fee, etc., for filing the ST3 late.

19. Coming to the reliance placed by the appellant on various case laws, we have perused these case laws and find that in the case of Commissioner Vs Tirupathi Fuels Pvt Ltd [2018 (12) GSTL J179 (SC)], which upheld the Order dt.13.03.2017 of Hon'ble Andhra Pradesh High Court as reported in [2017 (7) GSTL 142 (AP)], the Hon'ble High Court of Andhra Pradesh had taken a view that even if the assessee did suppress some facts and the assessee did pay up the duty amount before the SCN, the imposition of penalty was not tenable. The Hon'ble High Court upheld the decision of lower authority, who had set aside the penalty, in the case where penalty was imposed under section 78(1) by extending the benefit of section 73(3).

20. We also find that in the case of Jwalla Security Force Vs CCE [2015-TIOL-2397-CESTAT-Mumbai], it was held as follows:

> *Short payment is due to difference in income shown in balance sheet and ST 3 returns - since actual income was declared in the books of account it cannot be intention for evasion of tax – moreover, ST paid along with interest before issuance of SCN – merely because appellant is not challenging extended period it cannot be said that they have admitted suppression of facts – appellant is having better conduct as compared to the assessees who never pay ST and contest ST as well as penalties only for sake of litigation - appellant has made out case for immunity in terms of s.73(3) of FA, 1994 - penalties imposed under Section 76, 77 and 78 are set aside.*

21. In the case of Continental Foundation Joint Venture Vs CCE, Chandigarh-I [2007 (216) ELT 177 (SC)], it was held as follows:

> *The term suppression used under proviso to section 11A has to be construed strictly. Mere omission to give correct information is not suppression of facts unless it is deliberate to stop payment of duty. Suppression means failure to disclose full information with intent to evade payment of duty. There cannot be suppression of fact which is not willful and yet constitute a permissible ground for the purpose of proviso to section 11A.*

22. In the case of Tamil Nadu Housing Board Vs CCE [1994 (74) ELT 9 (SC)], it was held as follows:

> *When the law requires intent to evade payment of duty, then it is not just failure to pay duty. It must be something more. The word 'evade' in the context means defeating the provision of law of paying duty. It is made more stringent by the words 'intent'. In other words, the assessee must deliberately avoid paying duty which is payable in accordance with law.*

23. In the case of Collector of Central Excise Vs HMM Ltd [2002-TIOL-120-SC-CX], it was held that mere non-disclosure of certain items assessable to

duty does not tantamount to the malafides elucidated in the proviso to section 11A(1) of the Central Excise Act, 1944.

24. Therefore, essentially, for invoking extended period, as also for imposing penalty under section 78, it is incumbent upon the department to establish non-payment or short payment of service tax by reasons of fraud or collusion or willful misstatement or suppression of facts or contravention of any of the provisions of this law with intent to evade payment of service tax, where SCN is issued in terms of the proviso to sub-section (1) of section 73. Therefore, in order to invoke section 78, the SCN issued under proviso to section 73(1) has to be sustained first. In this case, while the SCN has been proposed invoking proviso to section 73(1), we do not find any ingredient to sustain the invocation of extended period for recovery of demand notwithstanding the fact that the appellants are themselves not contesting the recovery of service tax not paid/short paid even for the period beyond the normal period of demand. It is apparently because they paid entire amount of service tax and interest much before the issue of SCN itself. Merely because they are not contesting the confirmation of demand and recovery thereof, it would not tantamount to their admitting the fact that there was a deliberate act of evasion or there was any intent on their part to evade service tax payment. On the contrary, there is force that this was an omission which can be cured within the provisions of the Finance Act and Rules made thereunder subject to payment of interest, late fee, etc. Revenue has also argued that since they have paid 25% of penalty, they have already admitted the validity of imposition of penalty under section 78. We find that unlike section 73(3), payment @ 25% under section 76, does not bar a person from agitating the same before the Appellate Authority. Therefore, once there is no element of willful misstatement, fraud, collusion, etc., obviously in the given factual matrix, section 73(3) would have been available and that there was no need for issuing any SCN. The denial of benefit under section 73(3) by the Adjudicating Authority is therefore not correct or tenable and we find that they would be entitled for section 73(3) of the Act.

25. Therefore, having regard to factual matrix of the case, evidence on record, as also various case laws cited by both sides, we find that the department has not been able to establish the element of fraud or collusion

or willful misstatement or suppression of facts or contravention of any provision of this Chapter or Rules made thereunder with intent to evade payment of service tax. We find that it is a case of delayed payment of service tax and delayed filing of service tax return, which are curable within the provisions of the Finance Act, 1994 and Rules made thereunder. We also take note of the fact that while the investigation was over, after the reconciliation of the account and applicable payment of service tax, etc., in January, 2016 itself, there was apparently no reason for the department to wait to record another statement on 30.08.2017 & 10.03.2018 after a long gap and issue SCN thereafter on 06.04.2018 invoking extended period. These two statements do not disclose any further information leading to revision of amount already worked out nor brings out any new substantive fact having a bearing on requantification of demand or role of any person in the alleged evasion.

26. We also note the submission of the Consultant for the appellant that the demand was well within the normal period of time and covered within section 73(3) of the Act, and all the amounts were already paid along with interest as well as returns were filed, but the department waited much beyond January, 2016 and issued SCN sometime in 2018 only with a view to invoke proviso to section 73(1) so as to invoke penal provisions of section 78.

27. In view of the same, we find that the impugned order is liable to be set aside to the extent of imposition of penalty of Rs.7,16,02,680/- under section 78 on the appellant.

28. Insofar as the imposition of penalty on Mr. K. Bhaskar Rao, Director of appellant company, is concerned, we find that penalty under section 78A can be imposed on any director, manager, secretary, officer, etc., of the company who at the time of such contravention was in-charge of and was responsible to the company for the conduct of business of such company and was knowingly concerned with such contravention. We find that there is no statement recorded in respect of Mr. K. Bhaskar Rao and the entire allegation that he was knowingly involved in the evasion/non-payment of service tax is based on the statements dated 20.11.2015, 08.11.2016 & 10.03.2018 of Mr. K.V. Vasantha Rao. From perusal of these statements, it

is not forthcoming that Mr. K. Bhaskar Rao was directing Mr. K.V. Vasantha Rao not to pay service tax in time or not to file service tax return as per the schedule. There is nothing on record to substantiate the claim that he was in-charge in relation to those functions and it was under his active and direct instruction that Mr. K.V. Vasantha Rao has committed such non-compliance or alleged evasion. In fact, the department has not proposed any penal action in the SCN against Mr. K.V. Vasantha Rao even though he is the manager in the said company, who is also covered within the provisions of section 78A. The Adjudicating Authority's reliance on the fact that Mr. K. Bhaskar Rao did not give any explanation or rebuttal to the charges leveled in itself cannot become a ground for sustaining the charges in SCN for imposition of penalty under section 78A. Therefore, we find that in the facts of the case and evidence on record, imposition of penalty under section 78A on Mr. K. Bhaskar Rao is not tenable and is liable to be set aside.

29. In view of the above discussions and findings, the impugned order is modified to the extent of imposition of penalty on the appellant under section 78 and on Mr. K. Bhaskar Rao, Director of the appellant company under section 78A and to that extent the impugned order is set aside. The remaining order of the Adjudicating Authority is sustained.

30. Appeals are allowed partly with consequential relief, if any, as per law.

(Pronounced in the Open Court on 05.05.2025)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

(ANGAD PRASAD)
MEMBER (JUDICIAL)

Veda