

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA**

S.T.Appeal No.78641/18

Arising out of O/A No.310/S.Tax II/Kol/2018 dated 27.04.2018 passed by
Commr. of CGST & Central Excise (Appeals I), Kolkata

M/s M.Junction Services Ltd.

...APPELLANT(S)

VERSUS

Commr. of CGST & Central Excise, Kolkata North

RESPONDENT (S)

APPEARANCE

Shri Nanda Kishore Kothari & Shri Akshay Goenka, both C.As. for the
Appellant (s)

Shri S.Mukhopadhyay, Supdt.(A.R.) for the Revenue

CORAM:

SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING/DATE OF DECISION : 26. 12. 2018

ORDER NO. FO/A/77158/2018

Per Shri P. K. Choudhary :

The present appeal is listed for admission today. After hearing both sides and despite the amount involved in this case being below the threshold of Rs.2.00 lakhs, the appellant intends to contest the issue on merits, which is admitted.

3. With the consent of both sides, the appeal itself is taken up for hearing.

4. The brief facts of the case are that the appellant is registered with the Service Tax Department for providing Business Auxiliary service. During the scrutiny of records, it was found that the assessee paid the consultancy fees for the period April, 2007 to April, 2011. At that

time, they did not pay the service tax under reverse charge mechanism, Service Tax Rules, 1994. Subsequently, the assessee paid the service tax along with interest. Thereafter, a show-cause notice dated 05.10.2012 was issued on the following grounds :

(i) An amount of Rs.1,72,331/- as service tax (including cess) should not be demanded and recovered from the said assessee in terms of Proviso to Section 73 (1) of the said Act and the amount of Rs.1,72,331/- as service tax (including cess) already paid on 30.03.2012, should not be appropriated.

(ii) An amount of Rs.67,253/- calculated as interest should not be demanded and recovered from them in terms of Section 75 of the said Act and the said amount of Rs.67,253/- already paid, should not be appropriated.

(iii) Penalty should not be imposed upon them in terms of Section 78 of the said Act for violation of the above mentioned provisions of the said Act and the said Rules.

(iv) Penalty should not be imposed upon them in terms of Section 77 of the said Act for non-obtaining Service Tax Registration and non-submission of ST-3 Returns for material period.

5. The Adjudicating Authority confirmed the demand of Service Tax amounting to Rs.1,72,331/- and also interest of Rs.67,253/-. Since both the amounts were already paid by the assessee even before the issuance of show-cause notice, the same were appropriated. However, he imposed penalties under various Sections of the Finance Act, 1994.

The assesses were in appeal before the lower appellate authority and contested the imposition of penalties. The lower appellate authority dismissed the appeal. Hence, the present appeal before the Tribunal.

6. Heard both sides and perused the appeal records.

7. It is observed from the show-cause notice that the allegation was regarding non-payment of service tax under the category of "Consultancy Service" and on perusal of record, I find that the entire demand of service tax along with interest had already been paid by the assessee, for which, separate show-cause notice was issued, which culminated into a separate proceeding altogether. Subsequently, present show-cause notice has been issued for demanding service tax on the amount of Tax Deducted at Source (TDS), which was inadvertently left out by the assessee. On being pointed out, they immediately paid the amount of Rs.1,72,331/- along with interest amounting to Rs.67,253/- and intimated to the jurisdictional authorities.

8. I find that there is no material available on record to establish the allegation of suppression of facts, mis-declaration etc. with an intent to evade payment of service tax. On the other hand, the appellant assessee immediately paid the entire amount of service tax and intimated the same to the Range Officer by producing fresh documents. In my considered view, it is a fit case for waiver of penalty. Accordingly, I set aside the penalties imposed under various Sections by invoking Section 80 of the Finance Act, 1994.

9. In the result, the appeal is allowed with consequential relief to the appellant, if any.

(Dictated and pronounced in the open Court)

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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