

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.76620 of 2019

(Arising out of Order-in-Appeal No.34/Kol.South/2019 dated 01.03.2019 passed by Commissioner (Appeals) of CGST & Excise, Kolkata)

M/s Apeejay Pvt. Ltd.

Apeejay House, 15, Park Street, Kolkata-700016

Appellant

VERSUS

Commissioner of CGST & Excise, Kolkata South

180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

APPEARANCE :

Shri Bhawna Ghosh, C.A. for the Appellant

Shri P.K.Ghosh, Authorized Representative for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO...75641/2023

DATE OF HEARING : 07.06.2023

DATE OF DECISION : 07.06.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order where the penalty under Section 78 of the Finance Act, 1994 has been imposed on the appellant.

2. The facts of the case are that during the course of Audit, it was found that there were certain discrepancies such as short payment of service tax as reflected in ST-3 Returns and financial reports, electricity reimbursement etc. The appellant paid service tax along with interest during the course of audit.

2.1 Thereafter, show-cause notice has been issued to them for appropriation of same and to impose penalty on the appellant.

2.2 The matter was adjudicated. The amount already paid was appropriated but penalty under Section 78 of the Finance Act, 1994, was imposed.

2.3 Aggrieved from the said order, the appellant is before me.

3. Heard the parties and perused the records.

4. I find that in terms of Section 73(3) of the Finance Act, 1994, if the assessee pays the service tax along with interest before issuance of show-cause notice, no proceedings will be sustainable against the appellant. Admittedly, in this case, the appellant has already deposited the amount of service tax along with interest before issuance of show-cause notice. Therefore, the proceedings must would be an end.

5. In that circumstances, I set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

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