

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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75929 of 2018

(Arising out of Order-in-Appeal No.14/RAN/2016-17 Dated 05/08/2016 passed by
Commissioner (Appeals) Central excise & Service Tax, Ranchi.)

M/s. Mallick Engineer

(West Bokaro Colliery, Ghatotand, Ramgarh-823514)

Appellant

VERSUS

**Commissioner of CGST & Central Excise, Ranchi
Commissionerate**

(5-A, Main Road, Ranchi-834001)

Respondent

APPEARANCE :

None for the Appellant

Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.76053/2023

Date of Hearing : 10 July 2023

Date of Decision : 10 July 2023

PER R. MURALIDHAR

No one has appeared on behalf of the Appellant inspite of notice. During the last hearing, it was made clear that if the Appellant does not appear during the next posting of Hearing, the matter will be decided in merits.

2. Perused the documents with the help of Learned AR.

3. It is seen that the Appellant was issued Show Cause Notice for having undertaken various Works Contract Services during the period 2007-08 to 2011-12. The Show Cause Notice alleged that the Appellant did not take the Service Tax registration, nor paid the Service Tax nor filed the Service Tax Returns. Since the entire details of services provided by them came to the knowledge of the Department by way of verification and investigation, the Department viewed that the same amounted to suppression on the part of the Appellant and demand for the extended period was issued for the Service Tax of Rs.11,49,034/-. After due process, the Adjudicating Authority confirmed the demand.

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The Appellant filed an Appeal before the Commissioner (Appeals). After going through the documentary evidence produced by the Appellant, the Commissioner (Appeals) remanded the matter to the Adjudicating Authority to check the details of amounts being shown under the category of 'Retention money' and also to grant them the cum-Tax benefit and re-quantify the Service Tax demand, if any.

4. The Adjudicating Authority took up the Denovo Proceedings. After noting that no Service Tax can be demanded on the amounts retained by the client and also allowing the Cum Tax benefit, the Adjudicating Authority has re-quantified the Service Tax at Rs.4,96,711/- He confirmed the demand of Rs.4,96,711/- along with interest and imposed equal amount of penalty of Rs.10,000/- under Section 77 (1)(a) and penalty of Rs. 10,000/- under Section 77(2) of the Finance Act, 1994. Being aggrieved, the Appellant filed an Appeal before the Commissioner (Appeals).

5. Before the Commissioner (Appeals), the Appellant has made a pleading that they are contesting only the penalty imposed under Section 78 of the Finance Act, 1994, as observed from the Para 7 of the OIA passed by the Commissioner (Appeals). He has noted that the Appellant has not got themselves registered though they were providing the service to Tata Steel Ltd for more than ten years. Since they were not registered, they failed to file the ST-3 Returns. The amounts confirmed by the Adjudicating Authority clarified that they were required to pay the Service Tax during the period 2007-08, 2011-2012, but were not paid by the Appellant. Therefore, he held that the penalty imposed under Section 78 cannot be waived and did not interfere with the decision of the Adjudicating Authority and rejected the Appellant's Appeal. Being aggrieved, the Appellant is before the Tribunal.

6. As per the factual matrix discussed above, initially, the Department has gone through the Appellants records for the period 2007-08 to 2011-12 and issued Show Cause Notice for Rs.11,49,034/-. In the Denovo Adjudication, the Adjudicating Authority has re-quantified the Service Tax and held that the Appellant is required to pay

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4,96,711/-. As per the OIA, the Appellant did not contest this amount and were only contesting the penalty imposed under Section 78 before the Commissioner (Appeals). In the present Appeal, from the Statement of Facts and Grounds of Appeal filed by the Appellant, there is nothing to indicate that they had contested the issue on merits before the Commissioner (Appeals). They are not refuting the observation of the Commissioner (Appeals), wherein he has held that the Appellant is contesting only the penalty imposed under Section 78.

7. Therefore, it is clear that the Appellant is not contesting the issue on merits. In their Appeal before the Tribunal, they are contesting the issue on account of limitation on the ground that the Show Cause Notice was issued beyond 18 months and the suppression was not willful and they have cited the case law of Tamilnadu Housing Board V. CCE 1995 Supp (1) SCC 50+ 1994 (74) ELT (SC) and Collector Vs. Chemphar Drugs 40 ELT 276 = 1989 (2) SCC 127 = AIR 1989 SC 832 in support of their submissions that there is no suppression on their part.

8. After perusing the entire details of the case right from the time when the Show Cause Notice was issued in 2012, it is clear that the Appellant were required to pay Service Tax on certain portion of their operation. The very fact that the Appellant has not contested Rs.4,96,711/- on merits shows that the Appellant had rendered services which were liable for Service Tax as has been observed by the Commissioner (Appeals). Only detailed investigation and verification of the records of the Appellant, the fact of non-payment of Service Tax to the extent of Rs.4,96,711/- has come to light. As a matter of fact, since the Appellant have been providing services even prior to 2007-08, (during 2002 to 2007) the Service Tax liability could not be recovered by the Department as the period was even beyond the extended period of five years. Therefore, it is not a case of mere interpretation or bonafide belief but the case wherein the Appellant did not get themselves registered and did not make disclosure of all their activities to the Department.

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9. From the Appeal records, it is seen that even when the Appellant has filed the present Appeal in March 2018 they still have not obtained the Service Tax Registration Number as they have cited Assessee Code as ADKPM2374GSD001. Such registration is granted to Dealers.

10. In view of the above facts, I do not find any merits in the submissions made by the Appellant that there is no suppression and hence the extended period could not have been invoked for raising the demand and imposing the penalty under Section 78.

11. I hold that the confirmed demand and penalty imposed under Section 78, Section 77 (1) (a) and Section 77 (2) are required to be upheld.

12. In respect of penalty of Rs.4,96,711/- imposed under Section 78, it is seen that the Adjudicating Authority and lower Appellate Authority have not given an option of paying the reduced penalty @ 25%, if the Service Tax along with interest is paid within 30 days. Now I give the option to the Appellant to pay the penalty @ 25% of Rs.4,96,711/-, if they pay the Service Tax of Rs.4,96,711/- along with interest and this re-quantified penalty within 30 days from the date of receipt of this Order. If they fail to fulfill this condition, the penalty under Section 78 will stand at Rs.4,96,711/-.

13. Needless to say that they are also required to pay penalty imposed under Section 77(1)(a) and Section 77(2) as held by the lower Authorities.

14. The Appeal stands disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja