IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75856 of 2015

(Arising out of Order-in-Appeal No. 27/JSR/2015 dated 06.05.2015 passed by the Commissioner (Appeals), Central Excise and Service Tax, 605, Mahabir Tower, Main Road, Ranchi – 834 001)

M/s. Pradhan Engineering Construction & Co. : Appellant
LIG Row House,
Qtr. No. 94, Near RIT Police Station,
Adityapur-2, District: Saraikela-Kharsawan,
Jharkhand – 831 013

VERSUS

Commissioner of Central Excise and Service Tax : Respondent
143, New Baradwari, Sakchi,
Jamshedpur – 831 001

APPEARANCE:

None for the Appellant

Shri K. Chaudhuri, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76692 / 2024

DATE OF HEARING / DECISION: 21.08.2024

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order, challenging imposition of penalty under Section 78 of the Finance Act, 1994.

2. The facts of the case are that by way of the adjudication order, the ld. adjudicating authority had confirmed demand of Service Tax against the appellant, along with interest, and also imposed various penalties under Section 77(1)(a), Section 77(1)(c) and Section 77(2) of the Finance Act, 1994, but refrained from imposing any penalty under

Section 78 of the Act on the ground that the Show Cause Notice does not demonstrate that the short payment of Service Tax was done with the intention to evade the payment of Service Tax. Against the said order, the Revenue filed an appeal before the Ld. Commissioner (Appeals) *inter alia* on the ground of non-imposition of penalty by the ld. adjudicating authority under Section 78 of the Finance Act, 1994. The Ld. Commissioner (Appeals) has confirmed the penalty under Section 78 of the Act on the appellant vide the impugned order.

2.1. Aggrieved from the said order, the appellant is before us.

3. Considering the fact that the ld. adjudicating authority itself had found that it is a case of only short payment of Service Tax on the part of the appellant and the Revenue has not demonstrated in the Show Cause Notice that there was an intention to evade the payment of Service Tax by the appellant, in these circumstances, we hold that penalty under Section 78 of the Finance Act, 1994 is not imposable. Accordingly, the penalty imposed on the appellant under Section 78 of the Act is set aside.

4. In these terms, the appeal is disposed of.

(Dictated and pronounced in the open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd