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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75598 of 2017

(Arising out of Order-in-Appeal No. 262/ST-II/Kol/2016-17 dated 16.01.2017 passed by Commissioner of Central Excise (Appeals-II), Kolkata).

M/s Bharatmata Engineering Works,
(Ichapur Road, Canal Side,
Santragachi Howrah West Bengal-711104.

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata
GST Bhawan, 180. Santipally, Rajdanga Main Road, Kolkata-700107.

.. ...**Respondent**

APPERANCE :

None, for the Appellant
Shri S. K. Singh, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER No...76057/2025

DATE OF HEARING : 21.04.2025
DATE OF DECISION : 21.04.2025

PER R. Muralidhar :

When this matter was taken up, it is found that no defect is seen in this case. Earlier, the appeal was dismissed on account of non-prosecution. Subsequently, the appellant had filed an ROA, which was allowed by Misc. Order No. 77483/2019, dated 20.11.2019. After this, the appeal has not come up for hearing.

2. Today, when the case was posted before me, no one has appeared on behalf of the appellant. In the interest of justice, the appeal itself was taken up for disposal with the active help of the Learned AR.

3. After going through the facts of the case, it is seen that the appellant was required to pay Service Tax on GTA service on reverse charge basis for the period 2005-06 to 2009-10. Initially, they did not pay the same. After being pointed out by the Department, the appellant paid the service tax of Rs.52,103/- along with Education Cess of Rs.1039/- and SHC Cess of Rs.422/-, along with interest of Rs. 11,375/-, totaling Rs.64,939/- on 16.01.2010. Under Section 73(3) of the Finance Act 1994 if the service provider pays the Service Tax along with interest on being pointed out by the Department, no Show Cause Notice is required to be issued. This is a case where no Show Cause Notice should have been issued in the very first place but still it was issued. The adjudicating authority has appropriated the amount paid by the appellant and has imposed a penalty of Rs. 5000/-, which stands paid by the appellants.

4. The Revenue filed an appeal against the OIO. The Commissioner (Appeals) has enhanced the penalty to Rs.122,800/- by citing the provisions of Section 77. While he has been very diligent in citing Section 77, he has forgotten to consider Section 73(3), which says that no Show Cause Notice should be issued in case the appellant pays the entire amount along with interest and the Department has no issue about the quantification of the Service Tax amount or the interest paid thereon. In this case quantum of the Service Tax and interest paid is not being disputed by the Revenue. Hence, the provisions of Section 73(3) would be applicable.

5. I set aside the impugned order and allow the appeal filed by the appellant. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

T.K.