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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75722 of 2024

(Arising out of Order-in-Appeal No.365/ST-Kol/ST/Kol-North/2023 dated 22.02.2024 passed by Commissioner of CGST & CX, Kolkata Appeals-I Commissionerate, Kolkata.)

M/s. Pulsar Rubber Manufacturing Co. Private Limited
(Ganganagar, North 24 Parganas, Kolkata-700132.)

...Appellant

VERSUS

Commissioner, CGST & CX, Kolkata North

.....Respondent
(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri Sudip Bhagat, C.A. for the Appellant (s)
Shri S.Dutta, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 77941/2025

DATE OF HEARING : 12.12.2025
DATE OF DECISION : 12.12.2025

RAJEEV TANDON :

The impugned appeal has been filed assailing the order of the Ld.Commissioner(Appeals) dated 22.02.2024.

2. Heard both sides.

3. As a result of audit of the appellant's concern for the period 2009-10 to 2012-13, it was observed by the department that the appellant had not paid the Service Tax amount of Rs.3,66,135/-, which they were required to pay on Reverse Charge Mechanism. The appellant

was issued a show cause notice dated 14.10.2014 seeking recovery of the same along with interest. It is noticed from the adjudication order that an amount of Rs.3,15,368/- paid by the appellant vide two challans dated 04.08.2012 and 31.12.2013 has been appropriated. The adjudicating authority has also imposed various penalties under sections 77(1),77(2) and 78 of the Finance Act, 1994. In appellate proceedings, the Ld.Commissioner(Appeals) has maintained the order of the lower authority.

4. The appellant has now submitted that the show cause notice was barred by limitation and no extended period of limitation can be invoked as there was no ingredient for invoking the proviso provisions in terms of section 73(1). It is their case that what the department has alleged suppression, while working out the demand while it is a fact the amount was worked out on the basis of audited balance sheet of the assessee and therefore the charge of suppression is nothing more but a misconception. It is indeed a fact that the amount of tax demanded have been worked out on the basis of audited financial statements and books of accounts of the appellants. Thus, it is clear that no intent can be attributed for evasion of duty on the part of the appellant. Their submission that there is no suppression and the five year limitation cannot be invoked in the matter and therefore the impugned show cause notice is bad in law and is not maintainable, thus has sufficient merit. In support of their arguments the appellant has relied upon the Tribunal's decision in the case of **Hindalco Industries Ltd. v. Commissioner of Central Excise, Allahabad [2003 (161) ELT**

(Tri.Del.)], wherein it was held that invoking of suppression of facts is unfair besides being incorrect when the charge and the demand is worked out solely on the basis of balance sheet figures as the same is a "publicly available documents". It was held by the Tribunal therein that *"…….. the allegation that data stated in the balance sheet was suppressed from Central Excise authorities is not a viable allegation. The demand has to fail on the ground of limitation itself."*

5. Out of the total demand of Rs.3,17,499/- the appellant has submitted that the amount of Rs.3,15,368/- already stood paid well before the date of show cause notice and therefore no case of imposition of penalty under section 78 was made out. The said amounts were deposited vide challans dated 04.08.2012 and 31.12.2013 while the show cause notice has been issued well after such payments were made by the appellant only on 14.10.2014.

6. The Ld.Representative for the appellant has further submitted that they are prepared to pay the balance demand shortfall of Rs.2,231/- along with the applicable interest.

7. As for the alleged non-payment of tax on amount confirmed towards various expenses like professional or legal charges, labour charges and security charges as shown in the financial statements for the financial year 2009-10 to 2012-13 under RCM, the appellant has submitted that they worked out the service tax amount leviable w.e.f. 1st April 2012 despite the fact that Service Tax on such services was applicable under RCM from different dates and the aspect of payment of

Service Tax on RCM basis by them on payment basis had not been taken into account.

8. The appellant has also pointed out that the demand has been worked out by the authorities on the basis of payment ledgers. As a result in case of payment to those parties for which the appellant was liable to pay under partial reverse charge, the appellant had discharged the providers portion of tax amount as well, while paying the gross amount of tax. They have also enclosed service-wise calculation of the tax as due and have enclosed the copies of the bills raised. For the transportation of goods by road service for which an amount of Rs.64,359/- is confirmed vide the impugned orders, the appellant has through various invoices/bills raised pointed out that the service recipient was liable to pay Service Tax only when such service was provided by the GTA in relation to the transport of goods by road, while the department has included therein (in the demand) various other expenses incurred towards courier charges, ocean freight, matador hire, conveyance charges etc., which is either not provided by the GTA or is not in relation to service provided by transport of goods by road. It is therefore very clear that on such charges the appellant was not required to pay Service Tax under RCM. This demand therefore cannot be sustained. It is also noticed from the evidence submitted that in certain cases the appellant has not availed the transportation services from Goods Transport Agency and services of individual lorry owners and truck have been availed of on which the appellant would certainly not be liable to pay tax. In this regard the decision of this

Tribunal in the case of **Caps and Print Pvt.Ltd. v. Commissioner of Service Tax [2013 (30) STR 426 (Tri.)]** as well as the decision of the Hon'ble Madras High Court in the case of **Commissioner v. KMB Granite [2013 (32) STR J-205]** can be placed for records, that has already settled the legal position.

9. In view of the foregoing discussions, no case for imposition of penalty under section 78 of the Act is sustainable, as the show cause notice issued is barred by limitation and the penalty of equal amount as imposed under section 78 is set aside. But for the demand amount of Rs.3,17,499/-, the rest of the confirmed demand is set aside. The appellant would however be required to pay deficit serviced tax of Rs.2,231/- as discussed above.

Appeal is disposed off in the aforesaid terms.

(Dictated and pronounced in the open Court.)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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