IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75574 of 2018

(Arising out of Order-in-AppealNo.282/S.Tax-I/KOL/2017 dated30.10.2017 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

M/s.PrideCo Commercial Projects Pvt.Ltd.
(CJ 69,Salt Lake City, Kolkata-700091.)

...Appellant

VERSUS

Commissioner, CGST & CX, Kolkata North Commissionerate

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

APPEARANCE

NONE for the Appellant (s)

Shri P.Halder, Authorized Representative for the Revenue

CORAM:HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)

FINAL ORDER NO. 76075/2026

DATE OF HEARING :17.08.2026
DATE OF DECISION :17.08.2026

R. MURALIDHAR :

None has appeared on behalf of the Appellant. In the interest of justice, the Appeal itself was taken up for disposal with the help of the Ld.AR for the Department.

2. The Appellant has provided 'Commercial Construction Service' to West Bengal Housing Infrastructure Development Corporation (WBHIDCO) during the period 2009-10 to 2013-14. On the ground that the Appellant has not discharged the Service Tax for the services rendered by them, a Show Cause Notice came to be issued on 26.08.2014 demanding Service Tax of Rs.30,60,658/-. The Appellant submitted that they have rendered the service to WBHIDCO who have specifically told the Appellant that the Service Tax would be borne by them. Being under the impression that the Service Tax will be paid by WBHIDCO directly to the Service Tax Authority, the Appellant did not get themselves registered with the Service Tax Authorities. They did not charge the Service Tax on the RA Bills raised by them on WBHIDCO and therefore no Service Tax was paid by them. In the meanwhile they were pursuing the matter with the WBHIDCO who have paid them the entire tax amount of Rs.30,60,658/- after the issue of SCN. After this, the Appellant has paid the Service Tax of Rs.30,60,658/- along with interest of Rs.13,35,458/- before the Order-in-Original was passed. The Adjudicating authority has appropriated the Service Tax and interest paid by the Appellant and has dropped the penalty proposed under Section 78 of the Finance Act, 1994. However, he imposed penalty of Rs.10,000/- under Section 77. The Revenue filed Appeal before the Commissioner(Appeals) being aggrieved by the fact that the Adjudicating authority has dropped the penalty under Section 78. The Commissioner(Appeals) has allowed the Appeal holding that the appellant is required to pay equal amount of penalty in terms of Section 78. Being aggrieved, the Appellant is before the Tribunal.

3. In their Grounds of Appeal, the Appellant submits that the reason for non-payment of Service Tax is purely on account of non-payment of the Service Tax portion by the WBHIDCO. The Appellant carried a *bona fide* belief that the Service Tax element would be borne by WBHIDCO. Only after receipt of the Show Cause Notice, the Appellant made vigorous follow up with WBHIDCO who finally paid the entire Service

Tax amount to the Appellant. The Appellant has immediately made the Service Tax payment of Rs.30,60,658/- along with interest of Rs.13,35,458/- which shows that this is a *bona fide* case of non-payment of Service Tax and no*mala fide* can be attributed to the Appellant. They further submit that the penalty of Rs.10,000/- under Section 77 has already been paid by them. Accordingly, it is prayed that the penalty imposed under Section 78 may be set aside.

4. The Ld.AR for the Department submits that the Appellant is not any Government entity. It is also an admitted fact that service rendered by the Appellant is excisable to Service Tax. In spite of knowing the same, the Appellant neither took any registration nor paid the Service Tax. Only after issue of Show Cause Notice, the Appellant has paid the Service Tax along with interest. The details of non-payment of Service Tax has come to light only after detailed investigation and verification by the Revenue officials. Therefore, he justifies the penalty imposed under Section 78.

5. Heard the Ld.AR for the Department and perused the Appeal papers.

6. On going through the appeal papers wherein the Appellant has enclosed copies of the RA Bills, it is seen that the Appellant has not charged any Service Tax on the client. This shows that the Appellant was under *bona fide* belief that the Service Tax would be borne/paid by the recipient. After receipt of the Show Cause Notice, the Appellant took up the matter with the higher authorities at WBHIDCOand finally they released the Service Tax amount. After this, the Appellant has paid the entire Service Tax along with interest before the Order-in-Original was passed. These amounts have been appropriated by the Adjudicating authority, who after considering the factual details has refrained from imposing the penalty under Section 78.

7. I do not find that specific case of suppression, with an intent to evade payment of Service Tax on the part of the Appellant has been made out by the Revenue, for imposing penalty under Section 78 on them. The appellant has paid the entire Service Tax due along with interest before the OIO was passed. Therefore, I set aside the penalty under Section 78 on the Appellant and allow the Appeal to this extent.

8. The Appeal stands disposed off thus.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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