IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. ST/87804/2014

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-14-14-15 passed by the Commissioner of Central Excise (Appeals), Pune)

Vrushali Fabricators : **Appellant**

VS

Commissioner of Central Excise, Pune : **Respondent**

Appearance

Shri Mayur Shroff, Advocate for Appellant

Shri V.R. Reddy, Asstt. Commr. (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)
Hon'ble Shri Raju, Member (Technical)

Date of hearing : 12/01/2018
Date of pronouncement : 10/04/2018

ORDER NO. A/85967/2018

Per : Ramesh Nair

The Appellant are registered under service tax under the category of "Management, Maintenance and Repair Service". They were served show cause notice based upon the comparison of balance sheet and bank statements alleging that they have not paid service tax of Rs. 42,28,754/- for the period 2007 – 08 to 2011-12 on services rendered by them. The service tax demand was therefore proposed to be recovered alongwith interest, late fee and penalty. The demand was confirmed by the adjudicating authority and upheld by the Appellate Commissioner thereafter. Hence the present appeal by the Appellant.

2. Shri Mayur Shroff, ld. Advocate appearing for the Appellant submits that the demand has been made by relying upon partly on bank statements and partly from invoices raised instead of considering the balance sheet. The reliance on multiple records has led to compounding effect of demand. He points out that in year 2008 – 09 service tax demand was made by calculating tax @ 13.40% whereas the rate was 12.36% which resulted into excess demand. He draws our attention to the demand chart of the show cause notice and submits that out of five years impugned period they were eligible for Small scale exemption in four years i.e 2007 – 08 to 2011 – 12. That in the year 2011 – 12 part value was taken from bills and part value from bank statements which is erroneous. Thus the demand is without any base. That the Appellate Authority did not consider those facts and confirmed the demand. He submits that the Appellate authority has rejected their contention holding that 'there is variation in the taxable value declared in ST – 3 Return vis a vis P & L Account for the year 2008 – 09 and 2011 – 12. Although the difference is not substantial, the appellant have not given any justification. That they had given justification but even if seen it involves service tax of only Rs. 5313/-. The service tax demand works out to be Rs. 57,698/- is not sustainable. That the return filed by them were not held to be incorrect and hence demand does not sustain. He also submits that the Appellate authority has himself observed that they have paid service tax of Rs. 3,71,056/- as per detail given in ST – 3 returns. Thus there is no suppression and penalty is not sustainable. He also places reliance upon the Hon'ble Supreme Court judgment in case of

R.A. Shaikh Paper Mills P. Ltd. 2016 (335) ELT 203 (SC) to submit that they had already deposited the substantial amount but no option of 25% of penalty was given to them either in the show cause notice or impugned order.

3. Shri V.R. Reddy, ld. AC (AR) appearing for the revenue supports the impugned order. He submits that the Appellant did not give any justification as to why there is variation in the data taken from the bank statement and bill raised by them. Their contention that quantification of demand on the basis of Balance Sheet, bank statements and bills has led to duplication of demand was not supported by any contrary evidence. They did not produce any documentary evidence in their support and hence the demand has been correctly confirmed.

4. Heard both the sides and perused the records. We observed from the findings of Commissioner (Appeals) that though the Appellant have been disputing the computation of service tax but no evidence was produced by them before the said authority to show any anomaly in demand. We therefore find that the demand has been correctly made from them. Therefore we uphold the service tax demand. However we find that the major demand amount already stands paid by them. In such case following the ratio of above decision of Hon'ble Apex Court in case of R.A. Shaikh Paper Mills P. Ltd. 2016 (335) ELT 203 (SC) we hold that the Appellant is entitled to pay reduced penalty of 25% imposed upon them under section 78. Thus if the remaining service tax demand and 25% penalty is paid by them within

30 days of the receipt of this order, they shall be liable only for 25% penalty imposed upon them u/s 78 and the remaining amount of penalties shall stand waived. The impugned order is thus modified to the above extent. The appeal is partly allowed.

(Pronounced in court on 10/04/2018)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

SM.