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

Appeal No. ST/85563/2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-548/17-18 dt. 01 November 2017 passed by the Commissioner (Appeals-I) Central Excise, Pune)

Mercedes-Benz India Pvt. Ltd. : **Appellant**

VS

Commissioner of Central Tax, Pune-I : **Respondent**

Appearance

Shri Prasad Paranjape, Advocate with
Shri Mohit Raval, CA for Appellant

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

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)

Date of hearing : 31/05/2018
Date of decision : 31/05/2018

ORDER NO. A/86624/2018

Per : Dr. D.M. Misra

Heard both sides.

2. This is an appeal filed against Order-in-Appeal No. PUN-EXCUS-001-APP-548-17-18 dt. 01.11.2017 passed by Commissioner of Central Tax (Appeals) Pune-I. The short issue involved in the present appeal is: whether the appellant are

required to discharge penalty under Section 78 of the Finance Act, 1994.

3. Ld. Advocate Shri Prasad Paranjape for the appellant submits that the appellant have discharged service tax under Reverse Charge Mechanism for availing GTA Service, during the period December 2014 to March 2015. It is their contention that there was short payment of service tax to the tune of Rs.1,31,622/- in discharging their service tax liability. Attributing reasons for short payment the Ld. Advocate submits that there was some accounting error in computation of service tax liability which resulted in short payment. There was no intention, whatsoever, in discharging less service tax amount during the said period. Therefore imposition of penalty under Section 78 of the Finance Act, 1994 is unwarranted and uncalled for. In support he has referred to the judgment of this Tribunal, in their own case vide Order No. A/85956/2018 dt. 4.4.2018.

4. Ld. AR reiterates the findings of the Ld. Commissioner (Appeals).

5. I find that undisputedly there was short payment of service tax during the relevant period and reason for such short payment is attributed to accounting error. No contrary evidence or reasons advanced by the Revenue indicating suppression of fact resulting into such short payment. In these circumstances, I find force in

the contention of the Ld. Advocate for the appellant that penalty under Section 78 is unwarranted. Consequently the impugned order is set aside and appeal is allowed.

(Pronounced & Dictated in court)

(Dr. *D.M.Misra)*
Member (Judicial)

SM.