**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**WEST ZONAL BENCH AT MUMBAI**
**COURT No. I**

**APPEAL No. ST/88656/2014**

(Arising out of Order-in-Appeal No. PUN-EXCUS-002-APP-011-14-15 dated 2.5.2014 passed by Commissioner of Central Excise (Appeals), Pune-II)

**Rajendra Tukaram Kondekar** **Appellant**

Vs.

**Commissioner of Central Excise, Pune-II** **Respondent**

Appearance:

Shri Devendra Athavale, Advocate, for appellant
Shri Atul Sharma, Assistant Commissioner (AR), for respondent

**CORAM:**

**Hon'ble Dr. D.M. Misra, Member (Judicial)**
**Hon'ble Mr. Sanjiv Srivastava, Member (Technical)**

Date of Hearing: 18.6.2018
Date of Decision: 18.6.2018

ORDER No. **A/86762/2018**

Per: Dr. D.M. Misra

This is an appeal filed against order-in-appeal No. PUN-EXCUS-002-APP-011-14-15 dated 2.5.2014 passed by Commissioner of Central Excise (Appeals), Pune-II.

2. The short issue involved in the present appeal is whether the appellant is liable to penalty under Section 78 of the Finance Act, 1994.

3. Briefly stated the facts of the case are that during the relevant period, the appellant had provided services under the taxable category of 'supply of tangible goods for use of services', i.e. supplied dozers and tippers to various clients. However, they failed to discharge service tax of Rs.16,43,785/- for the period from 16.5.2008 to 31.3.2011 which, on being pointed out, was paid by the appellant along with interest of Rs.2,49,229/-. It is their contention that since the entire amount of service tax with interest had been discharged, therefore penalty should not be imposed under Section 78 of the Finance Act, 1994.

4. Learned Advocate for the appellant submits that in the present appeal, the appellant does not dispute the applicability of service tax. However, they contest the imposition of penalty equivalent to service tax under Section 78 of the Finance Act, 1994. It is his contention that they have not discharged the service tax amount because the appellant was not aware of applicability of the service tax for supplying the dozers and tippers on rent to M/s. Grasim Industries Ltd., Solapur. As soon as pointed out, the entire amount of service tax along

with interest had been paid by them. Therefore, equivalent penalty under Section 78 of the Finance Act is unwarranted as there was no intention to evade payment of duty.

5. Per contra, learned AR for the Revenue has pointed out that the appellant has failed to pay the service tax continuously for a period of three years and the same was paid with interest only after being pointed out by the department. It is his contention that non-payment of service tax by suppressing the fact of provision of the said service during the relevant period cannot be considered as *bona fide*, hence the authorities below had rightly imposed and confirmed the penalty on the appellant under Section 78 of the Finance Act, 1994. However, he has fairly conceded that the benefit of discharging 25% of the penalty has not been extended to the appellant by both the authorities below.

6. We find that there is no dispute of the fact that the appellant had failed to discharge the service tax during the period 2008 to 2011, even though against the contract they supplied various equipment to M/s. Grasim Industries Ltd. and the said service is taxable under the category of supply of tangible goods for use services. Further, the appellant had not disclosed the provision of the said service to their clients against the

respective contracts to the department nor registered with the Service Tax department. In these circumstances, we do not see reason to waive the penalty imposed under Section 78 of the Finance Act, 1994. However, the appellant is eligible to discharge 25% of the penalty imposed under Section 78 of the Finance Act, 1994 subject to fulfilment of the conditions laid down therein. In the result, the impugned order is modified to this extent and the appeal is partly allowed to the extent of allowing the appellant to discharge 25% of the penalty on fulfilment of the conditions laid down under Section 78 of the Finance Act, 1994.

7. Appeal is partly allowed.

(Pronounced in court)

**(Sanjiv Srivastava)**
**Member (Technical)**

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

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