IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

WEST ZONAL BENCH AT MUMBAI

COURT No. I

APPEAL No. ST/89452/2013

(Arising out of Order-in-Original No. 18/ST/2013/C dated 22.8.2013 passed by Commissioner of Central Excise, Nagpur)

Sricon Infrastructure Pvt. Ltd.	**Appellant**
Vs.	
Commissioner of Central Excise, Nagpur	**Respondent**

Appearance:

Shri PV. Sadavarte, Advocate, for appellant
Shri M. Suresh, Deputy Commissioner (AR), for respondent

CORAM:

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

Date of Hearing: 18.7.2018
Date of Decision: 18.7.2018

ORDER No. **A/87343/2018**

Per: Dr. D.M. Misra

This is an appeal filed against order-in-original No. 18/ST/2013/C dated 22.8.2013 passed by Commissioner of Central Excise, Nagpur.

2. Briefly stated the facts of the case are that the appellants are engaged in providing various taxable services under the category of (i) construction service in respect of commercial and industrial construction, (ii)

supply of tangible goods, (iii) manpower recruitment and supply agency, (iv) site preparation and clearing service and (v) business auxiliary service during the relevant period. During the course of scrutiny of the records for the period April 2007 to March 2012, it was noticed that even though the appellant had rendered various taxable services and the value shown in their ST-3 return filed with the department and the service tax paid as shown in the ST-3 returns is less than the service tax paid during the said period. Consequently, a show cause notice was issued to them for recovery of service tax of Rs.2,63,26,219/- for the said period. On adjudication, the demand was confirmed by the learned Commissioner with interest and penalties were imposed under Sections 76, 77 and 78 of the Finance Act, 1994. Hence the present appeal.

3. At the outset, learned Advocate, Shri P.V. Sadavarte for the appellant, submits that the appellant does not dispute the liability of service tax since it was short paid during the relevant period. However, the reason for such short payment is attributable for non-payment of their dues by M/s. National Highway Authority of India, in time. He has submitted that arbitration proceeding was initiated by the appellant and the same is pending before the Arbitral Tribunal.

He submits that the entire amount of service tax along with interest of Rs.50,32,740/- stands paid by the appellant. He submits that since there was reasonable cause for failure to discharge the appropriate amount of service tax in time, hence penalties imposed on them be waived in view of Section 80 of the Finance Act, 1994.

4. Learned AR for the Revenue vehemently argued that the appellant had failed to discharge the service tax liability during the relevant period and the reason for non-payment, even though attributable to non-receipt of the service tax from National Highway Authority of India in time, was failure on the part of the appellant in discharging service tax. It is his contention that the appellant has received the full amount of service tax from the service recipient. Therefore, failure to discharge the said amount would invite penalty and rightly imposed by the adjudicating authority.

5. We have carefully gone through the records and submissions advanced by both sides.

6. The short issue involved in the present appeal is whether penalties imposed under various provisions of the Finance Act, 1994 are justified or otherwise. We find that the learned Commissioner has categorically made an observation at para 9.7 of the order that the

appellant received the service tax amount from the recipient of service and it is their duty to discharge the service tax in time. We find substance in the observation of the learned Commissioner. Therefore, we agree with the findings of the learned Commissioner that this is not a fit case to invoke Section 80 of the Finance Act, 1994 as there has been deliberate failure on the part of the appellant in not paying service tax in time and also non-disclosure of the receipt of the amount from the recipient of the service by filing periodical ST-3 returns with the department. However, in the facts and circumstances of the case, considering the entire amount of service tax with interest has been paid, therefore the penalty imposed under Section 78 of the Finance Act, 1994 is upheld and penalty imposed under Section 76 is set aside. Appeal is partly allowed to the extent of setting aside imposition of penalty under Section 76 of the Finance Act, 1994.

7. The impugned order is modified to the above extent and the appeal is partly allowed.

(Pronounced in court)

(Sanjiv Srivastava)
Member (Technical)

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

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