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

APPEAL No. ST/87412/2018

(Arising out of Order-in-Appeal No. MUM/DGPM/WRU/APP-54/17-18 dated 27.3.2018 passed by Principal Additional Director General, DGPM, Customs & Central Tax, WRU, Mumbai)

S.A. Realty **Appellant**

Vs.

Commissioner of GST, Mumbai Central **Respondent**

Appearance:

Shri Jinit R. Shah, C.A., for appellant
Shri M.P. Damle, Assistant Commissioner (AR), for respondent

CORAM:

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

Date of Hearing: 17.9.2018
Date of Decision: 17.9.2018

ORDER No. **A/87308/2018**

This is an appeal filed against order-in-appeal No. MUM/DGPM/WRU/APP-54/17-18 dated 27.3.2018 passed by Principal Additional Director General, DGPM, Customs & Central Tax, WRU, Mumbai.

2. Briefly stated the facts of the case are that the appellants are engaged in providing the service of construction of residential complex service during the relevant period. The show cause cum demand notice

was issued to the appellant on 21.10.2015 alleging non-payment of service tax during the period 1.7.2010 to 30.6.2012 amounting to Rs.8,27,234/- and short payment of service tax of Rs.1,33,477/- for the relevant period. On adjudication, the demand was confirmed with interest and equal amount of penalty. Aggrieved by the said order, the appellant filed an appeal before the learned Commissioner (Appeals) who, in turn, rejected their appeal. Hence the present appeal.

3. Learned Chartered Accountant for the appellant has submitted that due to confusion in the levy of service tax on construction of residential complex services during the period 1.7.2010 to 30.6.2012, initially they have not paid the service tax nor filed any returns with the Department. He submits that on their own, before issuance of the show cause notice, the entire amount of service tax of Rs.8,27,234/- along with interest of Rs.1,54,093/- had been disbursed by them. It is his contention that therefore imposition of penalty equal to the amount of service tax under Section 78 of the Finance Act, 1994 is unwarranted and hence liable to be set aside. In any case, the appellants are entitled to discharge 25% of the penalty since they complied with the conditions laid down under Section 78 of the Finance Act, 1994. On the demand of Rs.1,33,477/-,

he submits that the said amount has been confirmed by the learned Commissioner (Appeals) taking into consideration the value of loans and other entries in general vouchers as the taxable value received in providing the taxable services during the relevant period. He has submitted that the value of loan and the value of other non-taxable services were wrongly computed in arriving at the gross taxable value. Therefore, the service tax of Rs.1,33,477/- is unsustainable in law. He has submitted that though necessary evidences of acknowledgment of the loan, general vouchers etc. were placed before the authorities below, but the same were not considered.

4. Per contra, learned AR for the Revenue reiterated the findings of the learned Commissioner (Appeals).

5. I find that undisputedly, the appellant had though rendered taxable services under the category of construction of residential complex service during the relevant period 1.7.2010 to 30.6.2012, but failed to discharge appropriate service tax in time and also failed to furnish periodical ST-3 returns indicating the amount of taxable value received against the said service. Thus the fact of rendition of taxable service as well as value of service had been suppressed from the knowledge of the department. Accordingly, imposition of penalty under

Section 78 for non-payment of service tax of Rs.8,27,234/- has been rightly confirmed by the authorities below. However, I find that both the authorities below have not extended the benefit of discharging 25% of the penalty subject to fulfilment of the conditions laid down under Section 78 of the Finance Act, 1994. As far as liability of service tax of Rs.1,33,477/- is concerned, I find that even though the appellant have been claiming that the value against which the said amount of service tax demanded represents loans received from various persons, wrong entry and thereafter correction in their books of account etc., I find that both the authorities below have not addressed on the defence advanced by the appellant. Therefore, to ascertain the correctness of the claim of the appellant, the matter needs to be remanded to the adjudicating authority. The adjudicating authority would consider the plea of the appellant and the evidences that would be produced by them during the course of adjudicating proceedings and decide the issue accordingly.

6. In the result, the impugned order is modified to the extent of allowing the benefit of discharging 25% of the penalty imposed under Section 78 of the Finance Act, 1994, subject to fulfilment of the conditions and

the correctness of the liability of service tax of Rs.1,33,477/- be ascertained afresh based on the evidences and record by the adjudicating authority.

7. Appeal is allowed by way of remand.

(Pronounced in court)

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

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