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

Appeal No. ST/86956/2013

(Arising out of Order-in-Appeal No. AV(143)88/2012 dated 7.9.2012 passed by the Commissioner of Central Excise & Service Tax (Appeals), Aurangabad).

M/s Om Multi Services	Appellant

Vs.

Commissioner of Central Excise, Aurangabad	Respondent

Appearance:

None (Adjn. Request)	for Appellant
Shri M.P. Damle, AC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 20.07.2018

Date of Decision: 20.07.2018

ORDER NO. **A/86987 / 2018**

Per: Dr. D.M. Misra

None present for the appellant. Heard the learned AR for the Revenue.

2. This is an appeal filed against Order-in-Appeal No. AV(143)88/2012 dated 7.9.2012 passed by the Commissioner of Central Excise & Service Tax (Appeals), Aurangabad.

3. Briefly stated facts of the case are that the appellant had provided taxable services under the category of 'Manpower Recruitment and Supply Agency Services' during the period August, 2007 to June, 2008 but failed to discharge Service Tax of Rs.3,95,355/- during the said period; nor they filed any ST-3 returns with the Department. A show-cause notice was issued to them on 14.7.2010 for recovery of the said Service Tax along with interest and penalty. On adjudication, the demand was confirmed and the amount paid during the course of adjudication proceedings had been appropriated. Aggrieved by the said order, they filed an appeal before the Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

4. The learned AR for the Revenue has submitted that there is no dispute of the fact that during the relevant period the appellant had failed to discharge Service Tax even though they had rendered services under the category of Manpower Recruitment and Supply Agency Service and received a total value of Rs.31,98,677/-. A case was booked against the appellant on the basis of documents evidencing payment by one M/s Cosmo Films Ltd., a receiver of the taxable services supplied by the appellant. It is his contention that the demand has been rightly confirmed and upheld by the learned Commissioner (Appeals). Further, the learned AR has placed a letter dated 16.7.2008 of the appellant wherein they have intimated payment of Service Tax of Rs.49,800/- and accordingly the balance amount confirmed by the learned Commissioner (Appeals) by the impugned order.

5. We find that there is no dispute regarding the liability to discharge Service Tax by the appellant in rendering taxable services under the category of 'Manpower Recruitment and Supply Agency Services' during the relevant period. The learned Commissioner (Appeals) in the order observed that the appellant had failed to discharge the outstanding Service Tax amount of Rs.43,447/-, which now the appellant claimed to have paid. Further, we find that the appellant have neither filed ST-3 returns nor paid Service Tax during the period August, 2007 to June, 2008 even though they have rendered services to M/s Cosmo Films Ltd. In these circumstances, we do not find justification to waive the penalty as prayed by the appellant in the appeal memorandum. However, since the appellant was not allowed the benefit to discharge 25% of the penalty imposed under Section 78 of the Finance Act, 1994 by the authorities below, hence, the same is extended to them subject to fulfillment of the conditions laid down under section 78 of the Finance Act, 1994. In the result, the impugned order is modified to the extent of allowing the benefit to discharge 25% of the penalty imposed under Section 78 of the Finance Act, 1994 and the appeal is partly allowed to the said extent.

(Operative portion of the order pronounced in Court)

(S. Srivastava)
Member (Technical)

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

Sinha