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

APPEAL No. ST/86642/2018

(Arising out of Order-in-Appeal No. GOA-EXCUS-000-APP-135-2017-18 dated 28.2.2018 passed by Commissioner of Central Excise & Customs (Appeals), Goa)

Mohit Ispat Limited **Appellant**

Vs.

Commissioner of Central Excise & ST, Goa **Respondent**

Appearance:

Shri C.S. Biradar, Advocate, for appellant
Shri Vivek Dwivedi, Assistant Commissioner (AR), for respondent

CORAM:

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

Date of Hearing: 30.7.2018
Date of Decision: 30.7.2018

ORDER No. **A/87874/2018**

This is an appeal filed against order-in-appeal No. GOA-EXCUS-000-APP-135-2017-18 dated 28.2.2018 passed by Commissioner (Appeals), Central Excise, Goa.

2. Briefly stated the facts of the case are that during the relevant period, the appellant, manufacturer of excisable goods, also registered with the department for receiving GTA services. It is alleged that they have not discharged the service tax liability on 75% of the total taxable value for manpower supply and recruitment

services under reverse charge mechanism for the financial year 2012-13 and 2013-14. It is alleged that on being pointed out by the departmental audit, the entire amount of Rs.3,89,340/- with interest of Rs.1,29,493/- was paid by the appellant before issuance of show cause notice. On adjudication, the amount was confirmed with interest and penalty. Aggrieved by the said order, they filed appeal with the learned Commissioner (Appeals) disputing the imposition of penalty on them. On rejection, they filed the present appeal.

3. Learned Advocate, Shri C.S. Biradar for the appellant, mainly disputed imposition of penalty on the appellant. It is his contention that for the first time, payment of service tax on reverse charge basis relating to manpower supply and recruitment service came into force from 2012 onwards and as soon as it was pointed out to the appellant that the liability to discharge service tax lies on them, immediately the entire amount of service tax with interest was paid by them. It is his contention that, therefore, imposition of penalty alleging suppression, misdeclaration etc. under Section 78 of the Finance Act, 1994 is unwarranted and liable to be dropped.

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner (Appeals).

5. I find that the appellant has not disputed the liability to discharge service tax during the relevant period on receiving manpower supply and recruitment services under reverse charge mechanism. I find force in the contention of the learned Advocate that there was a confusion initially about the discharge of service tax on the said services under reverse charge mechanism basis. Therefore, considering the fact that the entire amount of service tax with interest has been discharged by the appellant on being pointed out during the course of audit and before issuance of show cause notice, imposition of penalty equal to the service tax amount demanded, under Section 78 of the Finance Act, 1994 is uncalled for and, accordingly, the same is set aside.

6. The appeal is partly allowed to the extent of setting aside penalty imposed under Section 78 of the Finance Act, 1994.

(Pronounced in court)

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

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