IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/87849/2014

[Arising out of Order-in-Original No: 01/ST/2014 dated 07/01/2014 passed by the Commissioner of Central Excise, Customs and Service Tax, Nashik.]

Sinic Electronics Pvt Ltd … ***Appellant***

versus

Commissioner of Customs, Central Excise & Service Tax
Nashik ***…Respondent***

Appearance:

Shri DR Gadekar, Consultant for appellant

Shri M Suresh, Deputy Commissioner (AR) for respondent

CORAM:

Hon'ble Dr. D. M. Misra, Member (Judicial)
Hon'ble Shri C. J. Mathew, Member (Technical)

Date of hearing: 24/10/2018
Date of decision: 24/10/2018

ORDER NO: A/87777 / 2018

Per: Dr. D.M. Misra

Heard both sides.

2. This is an appeal filed against Order-in-Original No: 01/ST/2014 dated 07/01/2014 passed by the Commissioner of Central Excise, Customs and Service Tax, Nashik.

3. Briefly stated, the facts of the case are that, on the basis of intelligence, the appellant's records were scrutinized which revealed that the appellant were engaged in the activity of providing repair and maintenance service of automation machines installed in banks and collected service charges during the relevant period but failed to discharge service tax. Further, it revealed that they had, besides collecting their service charges, also collected service tax on the same but failed to deposit the service tax amount with the government. Consequently, the show cause notice was issued to them for recovery of the service tax amount of ₹ 78,00,557/- along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, the appellant filed the present appeal before this forum.

4. Learned Consultant for the appellant submits that due to sever financial constraint during the relevant period i.e. from December 2007 to June 2012 they have failed to discharge service tax amount of ₹ 78,00,557/- though collected from the recipient of service but the same was discharged with interest. Hence, imposition of penalty under Section 78 of the Finance Act, 1994 is unsustainable in law.

5. Learned Authorised Representative for Revenue reiterates the findings of the Learned Commissioner and drew our attention to the specific finding relating to non-payment of service tax even though the service tax had been collected from the customers.

6. We have carefully considered the submissions advanced by both the sides and perused the records. It is not in dispute that the appellant had provided ‘management, maintenance or repair service’ during the relevant period but failed to discharge service tax even though the same was collected along with their service charges. In examining the relevant invoices and other evidences, the Learned Commissioner recorded his finding as follows:

> “4.4. Elaborating further, I find that M/s. Sinic had raised Tax Invoices/Bills charging the amount to their customers against performance of service. A perusal of Tax Invoice No. 190/24.12.2007, No.200/26.12.2007, No. 258/26.12.2007 and No. 1285/31.12.2007, taken on sample and reference basis, revealed that the invoices contained certain information such as date of commencement of AMC, date of expiry of AMC, location of AMC, payment received date, DD/cheque No. etc. It is further seen that M/s. Sinic had applied the basic rate towards AMC charges of particular Office Automation Equipment, and charged the service tax at applicable rate due thereon, which was realized from their customers. Therefore, it is concluded that the service tax was collected from the customers, but was not deposited to the Government exchequer. However, this act commenced w.e.f. Dec, 2007. This fact was duly admitted by Shri Niranjan S. Bhatwal and Shri Ashish Gopal Shami Managing Director and Accounts Officer of M/s. Sinic, respectively, in their respective statements dated 25.01.2011 and 02.08.2011. Deposition or confession, if found true on examination, is a corroborative piece of evidence, and can be relied upon to decide the case. As the assessee had charged and collected the service tax from their customers against providing a taxable service, the

> same is statutorily required to be deposited to the Government in terms of Section 68 of the Finance Act, 1994, and no portion of it can be retained by them.
>
> 4.5. Now, it is a matter of fact that M/s. Sinic had obtained the Service Tax registration in the month of Oct, 2003, and, on their request, the Centralized Service Tax registration was issued during Aug, 2007 in the name of their Dhule Corporate office, as they were maintaining centralized accounting at. Dhule office. This evidently showed that the assessee was well aware of the service tax provisions and their applicability, and therefore, it was their responsibility to discharge the obligation, in which they failed miserably."

7. Neither in the appeal memorandum nor during the course of hearing the appellant has produced evidences to rebut the said findings of the Learned Commissioner. Since during the relevant period the appellant had collected service tax but not deposited with the Government, we do not find any reason not to invoke the extended period of limitation and impose penalty under Section 78 and other provisions of Finance Act, 1994 as has been done by the adjudicating authority in the order impugned.

8. In the result, the impugned order is upheld and the appeal is dismissed.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

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

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