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

Appeal No. ST/86497/2018

(Arising out of Order-in-Appeal No. NSK/EXCUS/000/ APPL/129 /17-18 dated 17.01.2018 passed by Commissioner of GST & C.Ex (Appeals), Nashik)

Esbee Electrotech LLP **Appellant**

Vs.

The Commissioner GST & C.Ex, Nashik **Respondent**

Appearance:

Shri Nidhi Nawal, Advocate for appellant
Shri Atul Sharma, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision : 19.07.2018

FINAL ORDER NO. **A/88205 / 2018**

Per: S.K. Mohanty

Brief facts of the case are that the appellant is engaged in the manufacture of excisable goods namely HRC Fuses, Control Box Assembly, parts of Relay etc., falling under Chapter 85 of the Central Excise Tariff Act, 1985. The appellant is also registered with the Service Tax department as a recipient of taxable service. During the period August 2012 to March 2014, the appellant had received the taxable service viz. manpower supply service from different service providers. As per the requirement under the Service Tax statute, the appellant was required to pay service tax @ 9.27%, as the recipient of such taxable service. However, the appellant did not pay the service tax within the stipulated time and subsequently paid such service tax amount along with interest on 05.03.2014 and 31.03.2014. During the course of audit of records in the month of May 2014, the audit wing of Service Tax department had observed such non-payment of service tax amount within the prescribed time frame. Thus, the department vide letter dated 05.06.2015 had insisted the appellant for payment of penalty amount at the prescribed rate. Reply furnished pursuant to such letter was not accepted by the department and accordingly, show-cause proceedings were initiated for imposition of penalties under Section 77 and 78 of the Finance Act, 1994. The show-cause notice dated 03.02.2016 was adjudicated against the appellant, in imposing penalties on the appellant. The learned Commissioner (Appeals) vide impugned order dated 17.01.2018 has upheld the adjudged penalty amount imposed on the appellant. Hence, the appellant has filed this appeal before the Tribunal.

2. Learned Advocate appearing for the appellant submits that since the service tax amount along with interest was paid much before issuance of show-cause notice, the benefit of sub-section (3) of Section 73 of the Act should be available for non-

issuance of show-cause notice, exclusively with the proposals for invocation of the penal provisions.

3. On the other hand, the learned D.R. appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. It is not the case of Revenue that non-payment of service tax by the appellant at the material time was due to the reason of fraud, collusion, willful mis-statement etc., with the intent to defraud Government revenue. Since, on pointing out the mistake by department regarding non-payment of service tax within the stipulated time, the entire amount of such liability along with interest was deposited by the appellant *suo motu* before issuance of show-cause notice, I am of the view that the case of the appellant squarely falls under the provisions of sub-section (3) of Section 73 of the Act, for non- initiation of any further proceedings, seeking for imposition of penalty alone. Since the department has not specifically alleged or substantiated the fact that the ingredients mentioned in sub-section (4) of Section 73 of the Act are present in the circumstances of the present case, I am of the view that benefit of sub-section (3) of Section 73 should be available to the appellant.

6. Therefore, I do not find any merits in the impugned order, so far as it confirmed the penalties imposed on the appellant. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant to such extent.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk