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

Appeal No. ST/87469/2018

(Arising out of Order-in-Appeal No. MKK/685/RGD/100/2017-18 dated 31.03.2018 passed by the Commissioner of Central Excise & Service Tax (Appeals), Belapur).

M/s P.M. Enterprises	Appellant

Vs.

Commissioner of Central Excise, Belapur	Respondent

Appearance:

Shri V.S. Sejpal, Advocate	for Appellant
Shri S.B. Mane, AC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Date of Hearing: 02.01.2019

Date of Decision: 02.01.2019

ORDER NO. **A/85007 / 2019**

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Appeal No. MKK/685/RGD/100/2017-18 dated 31.03.2018 passed by the Commissioner of Central Excise & Service Tax (Appeals), Belapur.

2. Briefly stated the facts of the case are that the appellants are engaged in rendering taxable services under the category of Manpower Recruitment and Supply services during the relevant

period January, 2009 to March, 2012, but failed to discharge Service Tax liability and also failed to file periodical Service Tax returns during the said period. Later, they have paid the entire amount of Service Tax along with interest. Show-cause notice was issued to the appellant for appropriation of the amount of Service Tax paid with interest and proposal for penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who in turn, partly allowed the appeal modifying the order of the adjudicating authority by remanding the matter for re-quantification of the penalty. Hence, the present appeal.

3. Learned Advocate Shri V.S. Sejpal for the appellant submits that before visit of the officers on 6.5.2011, the appellant had paid the outstanding Service Tax not paid between January, 2009 and March, 2011 on 2.5.2011. It is his contention that the total Service Tax of Rs.32,84,453/- was paid by them before issuance of show-cause notice on 22.10.2012. It is his contention that since the entire amount of outstanding tax with interest has been discharged before the issuance of show-cause notice, therefore, their case is covered under Section 73(3) of the Finance Act, 1994. In support, he has referred to the judgment of this Tribunal in the following cases: -

(i) *Prasad Corporation Ltd. Vs. Commissioner of Service Tax, Chennai - 2013 (30) STR 571 (Tri-Chen.)*

(ii) *Vista Infotech Vs. CST, Bangalore – 2010 (17) STR 343 (Tri-Bang)*

(iii) *Sunita Tools Pvt. Ltd. Vs. CST, Mumbai_II – 2015 (37) STR 644 (Tri-Mum).*

(iv) Nair Coal Service Ltd. Vs. Commissioner of Central Excise, Nagpur – 2016 (45) STR 529 (Tri-Mum).

4. Per contra, the learned AR for the Revenue has submitted that the appellant was registered with Central Excise department for providing taxable services under the category of Manpower Recruitment and Supply service since 2006. They have discharged appropriate Service Tax between 2006 and 2008 and filed periodical ST-3 returns with the Department. However, they stopped discharging Service Tax from January, 2009 onwards even though they continued to render the taxable services and collected the appropriate Service Tax from the service recipient. Also they had failed to file ST-3 returns as required under the relevant provisions of the Finance Act, 1994 and the rules made thereunder. This has been admitted by Shri Uttam More in his statement dated 06.05.2011. He submits that merely because the appellant had discharged the outstanding Service Tax before issuance of show-cause notice cannot absolve them from the breach of provisions committed in not discharging the Service Tax, which were collected from the customers and retained by them. Therefore, section 73(3) of the Finance Act, 1994 is not applicable in the present case. In supports, he refers to the judgment of the Hon'ble Karnataka High Court in the case of *Commissioner of Central Excise, Mangalore Vs. Jindal Vijaynagar Steel Ltd. – 2017 (346) ELT 379 (Kar).*

5. Heard both sides and perused the records.

6. Undisputedly the appellant has obtained registration from Central Excise Department for providing taxable services under

the category of Manpower Recruitment and Supply Service way back in March, 2006. Initially they discharged Service Tax collected from the recipient of service between 2006-07 to December, 2008, but from July, 2009 onwards they stopped making payment towards Service Tax liability nor they intimated, even though the Service Tax amount has been billed and collected from the recipient of service. The plea of sickness of the proprietor of the appellant cannot be a ground for not discharging Service Tax though collected from the customers. It is not in dispute that they continued to run the business and received the amount during the said period including the Service Tax component. Also, from the records, I do not find that the appellant had intimated in any manner to the Department about collection of the Service Tax from the customers and not depositing with the Govt. by way of filing periodical returns. In these circumstances, I do not find merit in the contention of the learned Advocate for the appellant that penalty cannot be imposed under section 78 and other provisions of the Finance Act, 1994. Moreover, since there is contravention of the provisions with intent to not discharge Service Tax, the provisions of Section 73(3) of the Finance Act, 1994 cannot be invoked.

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

(Dictated and pronounced in the Court)

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

Sinha