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

Appeal No. ST/86286/2018

(Arising out of Order-in-Appeal No. PK/352/MC/2017 dated 20.12.2017 passed by Commissioner of CGST & Central Excise (Appeals), Mumbai)

Patrawala Corporation **Appellant**

Vs.

Respondent

Commissioner of CGST
South Mumbai

Appearance:

None for appellant
Shri O.M. Shivdikar, A/C (AR) with for respondent
Shri S.K. Hatangadi, Asst. Commr (AR)

CORAM:

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

Date of Hearing & Decision : 21.01.2019

FINAL ORDER NO. **A/85325 / 2019**

Per: S.K. Mohanty

None appeared for the appellant, despite notice.

2. On perusal of the order sheet, I find that the matter was listed on 20.06.2018, 08.08.2018, 27.08.2018, 04.10.2018, 12.11.2018, 05.12.2018 and 18.12.2018 for final hearing. Only in one of the occasions, the appellant present itself for arguing its case. This shows the casual approach of the appellant in pursuing its statutory right of appeal. Therefore, without

considering any further adjournment, the matter is taken up for hearing and disposal today with the assistance of the learned D.R. for Revenue.

3. Brief facts of the case are that the appellant was engaged in the business of providing taxable services under the category of “Business Auxiliary Service”, “Erection, Commissioning & Installation” and “Works Contract Service”, defined under the Finance Act, 1994. During the disputed period, though the appellant had reflected its service tax liability in the revised ST-3 Returns, but did not deposit the service tax attributable to provisions of the service. I find that the lower authorities have recorded that the appellant had collected the service tax amount from its client but did not deposit the same into the Government exchequer. For non-payment of service tax, the department proceeded against the appellant through issuance of show-cause notice. The matter was adjudicated vide order dated 20.03.2013, wherein the service tax demand was confirmed and the amount deposited during adjudication proceedings was appropriated along with interest in the said order. Besides, the adjudication order also imposed penalty under Section 76 of the Act. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 20.12.2017 has upheld the adjudged demand of penalty confirmed on the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

4. The issue involved in the appeal for consideration by the Tribunal, is whether for non-payment of service tax within the stipulated time, the appellant is exposed to the penal consequences provided under Section 76 of the Act ibid. Section 76 of the Act mandates that in case of non-levy, short levy or non-payment or short payment of service tax, penalty at the appropriate rate shall be imposed on the assessee. Admittedly, the service tax liability along with interest had been deposited by the appellant during the course of adjudication proceedings. Thus, under the circumstances of the case, the appellant is exposed to penal consequences provided under Section 76 of the Act. Therefore, I do not find any infirmity in the orders passed by both the lower authorities in confirming the penalty under Section 76 of the Act.

5. Therefore, I do not find any merits in the appeal filed by the appellant. Accordingly, same is dismissed.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk