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

Appeal No. ST/87716/2018

(Arising out of Order-in-Appeal No. PVNS/238/APPEALS Thane/TH/2017-18/2161 dated 27.02.2018 passed by Commissioner (Appeals Thane), GST & Central Excise, Mumbai)

Prashant Transport Excavation Division **Appellant**

Vs.

Commissioner of CGST, Thane **Respondent**

Appearance:

Shri Rajiv Luthia, C.A. for appellant
Shri Ms. Supdt. Asst. Dy. Addl. Commr (AR) for respondent

CORAM:

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

Date of Hearing & Decision : 01.10.2018

FINAL ORDER NO. **A/88333/2018**

Per: S.K. Mohanty

The appellant has filed this appeal against the impugned order dated 27.02.2018 passed by the learned Commissioner (Appeals), GST & Central Excise, Mumbai.

2. The facts of the case, in brief are that the appellant was registered with the Service Tax authorities for rendering taxable service under the category of "site formation and clearance, excavation, earth moving and demolition services", defined under Section 69 of the Finance Act, 1994. It was noticed that the appellant had not discharged the service tax liability on said

services during the period 2011-12 to 2013-14. Accordingly, show cause proceedings were initiated against the appellant. The adjudicating authority confirmed the demand of service tax of Rs.36,57,281/- along with interest and imposed penalty under Section 70, 77 and 78 of the Act and also appropriated the entire amount of service tax as deposited by the appellant. By the impugned order, the ld. Commissioner (Appeals) has upheld the adjudication order and rejected the appeal.

3. Heard both sides and perused the records.

4. The ld. Counsel on behalf of the appellant submitted that there was no suppression of facts, with intent to evade payment of tax and the appellant had paid the entire amount of service tax before issuance of the adjudication order. Hence, it is submitted that imposition of penalty under Section 78 of the Act is not justified.

5. The ld. A.R. for Revenue has reiterated the findings recorded in the impugned order.

6. I find that the appellant had paid the entire amount of service tax and is not disputing confirmation of such amount by the department. It is contended by the appellant that the department was aware of the business activity and the nature of services provided by the appellant, as the audit was conducted

twice in past for the financial years 2005-06 to 2008-09 and 2009-10 to 2010-11. It is further contended that the delay in payment of service tax is on account of financial crisis.

7. The main contention of the Revenue is that the appellant had not disclosed the tax liability, which was detected by the department and therefore, imposition of penalty is warranted. It appears that the records and documents were audited by the audit wing in earlier occasion. Hence, imposition of penalty under Section 78 of the Act is not justified. The Tribunal in the case of Shri P. Vinod vs. Commissioner of Service Tax, Chennai – 2018-TIOL-2228-CESTAT-MAD, in identical situation, has set aside the penalty under Section 78 of the Act.

8. In view of the above discussion, the demand of service tax along with interest and penalty imposed under Section 70 and 77 of the Act are upheld. As the appellant is not disputing the demand of service tax, which has already been paid, the penalty under Section 78 of the Act is set aside.

9. Appeal filed by the appellant is partly allowed.

(operative part pronounced in Court)

(S.K. Mohanty)
Member (Judicial)

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