# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

**Service Tax Appeal No. 87262 of 2018**

(Arising out of Order-in-Appeal No. KLH-EXCUS-000-APP-192 to 193-2016-17 dated 08.02.2017 passed by the Commissioner of Central Excise & Service Tax (Appeals), Kolhapur)

**M/s Surya Engineers** **.... Appellant**
Siddhivinayak Colony, Amboli Road, Opp New Bus Stop,
Ajra, Kolhapur, Maharashtra

Versus

**Commissioner of Central Excise & Service Tax, Kohapur** **.... Respondent**
Vasant Plaza, Rajaram Road, Kolhapur - 416001

Appearance:

Shri N.S. Patel, Advocate for the Appellant

Shri O. Shivdikar, AC, Authorized Representative for the Respondent

**WITH**

**Service Tax Appeal No. 87264 of 2018**

(Arising out of Order-in-Appeal No. KLH-EXCUS-000-APP-192 to 193-2016-17 dated 08.02.2017 passed by the Commissioner of Central Excise & Service Tax (Appeals), Kolhapur)

**M/s Surya Engineers** **.... Appellant**
Siddhivinayak Colony, Amboli Road, Opp New Bus Stop,
Ajra, Kolhapur, Maharashtra

Versus

**Commissioner of Central Excise & Service Tax, Kohapur** **.... Respondent**
Vasant Plaza, Rajaram Road, Kolhapur - 416001

Appearance:

Shri N.S. Patel, Advocate for the Appellant

Shri O. Shivdikar, AC, Authorized Representative for the Respondent

**CORAM:**

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

**FINAL ORDER NO. A/ 86214-86215/2019**

Date of Hearing: 08.07.2019

Date of Decision: 08.07.2019

***Per: Dr. D.M. Misra***

Heard both sides.

2. These two appeals are filed against Order-in-Appeal No. KLH-EXCUS-000-APP-192 to 193-2016-17 dated 08.02.2017 passed by the Commissioner of Central Excise & Service Tax (Appeals), Kolhapur.

3. Briefly stated the facts of the case are that the appellant during the relevant period from April, 2011 to March, 2012 provided taxable services under the category of Erection, Commissioning or Installation Services, but failed to discharge the Service Tax of Rs.3,43,653/- for the period from April, 2011 to September, 2011 and Rs.4,19,702/- for the period from October, 2011 to March, 2012. Consequently, demand notice was issued to them on 17.4.2013 for recovery of the said amount of Service Tax not paid. 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 by reducing penalty under section 77 of the Finance Act, 1994. Hence, the preset appeal.

4. Learned Advocate Shri N.S. Patel for the appellant submits that the entire amount of Service Tax of Rs.3,43,653/- and interest on the said amount i.e. Rs.1,55,191/- and also Service Tax amount of Rs.4,19,702/- along with interest of Rs.1,65,122/- have been paid by the appellant on 14.11.2014. He submits that due to sickness of

the proprietor and due to lack of adequate staff, the Service Tax amount could not be paid in stipulated time nor ST-3 returns could be filed. Therefore, he prays that imposition of penalty under Sections 76 and 77 be waived.

5. Learned AR for the Revenue submits that even though the appellant have collected the Service Tax amount from the customers but failed to deposit the same with the Government, therefore, penalty under Sections 76 and 77 are justified.

6. I have carefully considered the submissions made by the appellants and the learned AR for the Revenue.

7. In the present case, there is no dispute about liability to discharge Service Tax during the relevant period from April, 201 to March, 2012 in rendering taxable service under the category of Erection, Commissioning or Installation Services. It is also not in dispute that even though the appellant has collected the Service Tax from the customers, but failed to discharge the Service Tax in time. The Service Tax amount alongwith interest had been paid by the appellant only after adjudication order was passed. In these circumstances, I do not find any justification in waiving the penalty imposed under Sections 76 and 77 of the Finance Act, 1994. Consequently, the appeals being devoid of merit are accordingly dismissed.

(Dictated and pronounced in open court)

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

Sinha