

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
MUMBAI**

WEST ZONAL BENCH

Service Tax Appeal No: 85936 of 2015

[Arising out of Order-in-Appeal No: NGP/EXCUS/000/APP/273/14-15 dated 13th February 2015 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Executive Engineer,
Chief Gate Erection Uni No.2, Link Road, Sadar,
Nagpur – 440 001

... Appellant

versus

Commissioner of Central Excise & Customs
Telanghedi Road, Civil Lines, Nagpur – 440 001

...Respondent

APPEARANCE:

Shri Makrand Mate, Representative for the appellant

Shri Dilip Shinde, Assistant Commissioner (AR) for the respondent

CORAM:

**HON'BLE DR DM MISRA, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)**

FINAL ORDER NO: A/88464 / 2018

DATE OF HEARING: 13/12/2018
DATE OF DECISION: 13/12/2018

PER: C J MATHEW

This appeal of The Executive Engineering, Chief Gate Erection
Unit No.2, Nagpur arises from order-in-appeal no. NGP/EXCUS/

000/APP/273/14-15 dated 13th February 2015 of Commissioner of Central Excise & Customs (Appeals), Nagpur which has upheld the order of the lower authority confirming demand of ₹ 1,72,977/- as tax collected under Finance Act, 1994 but not deposited in the government exchequer. In addition, besides recovery of interest, imposition of penalty under section 77 of Finance Act, 1994 and penalty of like amount under section 78 of Finance Act, 1994 is under challenge.

2. The appellant is a department of Government of Maharashtra and fabricates and erects gates of various types. The appellant also carries out inspection of 'parts of gate' that are manufactured by outside entities and it was held that inspection charges was being recovered from these manufacturers along with tax thereon which was not deposited with Government of India.

3. We have heard Representative of the appellant and Learned Authorised Representative.

4. Inspection fees were paid on dates specified in the contract and the said amount was to include applicable service tax; it was contended that the activity undertaken by the appellant is not a taxable service. However, it is seen from the records that the office of the appellant has admitted that service tax had been collected along with inspection fees as agreed upon in the tender documents. It is,

therefore, a clear case of non-deposit of service tax component collected in the various invoices. The tender process makes it clear that the payment of inspection fees also must comply with the provisions of Finance Act, 1994 and, thereby, includes the service tax component. Implicitly, service tax component had been collected and this must be deposited. It is the responsibility of every provider of service to deposit the amounts collected as service tax, irrespective of whether the service provided is taxable or not, with the exchequer. Failure to do so must result in recovery of that amount.

5. It is seen that the appellant is a department of the government of Maharashtra concerned with the erection and maintenance of dams. Owing to the lack of understanding and absence of motive, imposition of penalty under section 78 of Finance Act, 1994 will not sustain. Accordingly, we set aside the penalties imposed under section 77 and 78 of Finance Act, 1994 and with that modification, allow the appeal to that extent.

(Pronounced in open court)

(Dr. D M Misra)
Member (Judicial)

(C J Mathew)
Member (Technical)