

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

WEST ZONAL BENCH

Service Tax Appeal No: 89392 of 2014

[Arising out of Order-in-Appeal No: NSK-EXCUS-000-APP-20-14-15 dated 30th June 2014 passed by the Commissioner of Central Excise & Customs (Appeals), Nasik.]

Milind Electric Works
6 Dhake Colony, Jilha Peth, Jalgaon -1, Nasik

... Appellant

versus

Commissioner of Central Excise & Customs
Kendriya Rajaswa Bhavan, Gadkari Chowk,
Nasik - 422002

...Respondent

APPEARANCE:

Shri Kewal Shah, Chartered Accountant 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/88465 / 2018

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

PER: C J MATHEW

The appeal lies against order-in-appeal no. NSK-EXCUS-000-APP-20-14-15 dated 30th June 2014 of Commissioner of Central

Excise & Customs (Appeals), Nasik which has upheld the liability of the appellant to tax of ₹ 8,11,362/-

2. Appellant is in the business of installation of electronic and electrical devices, *i.e.*, energy meters and of replacement of service wires. It would appear that the appellant is proprietary concern claiming to be in ignorance of the liability to tax under Finance Act, 1994 and, shortly after registration, computed and deposited the tax liability as ₹5,21,307/- along with the applicable interest. Despite this, the appellant was issued with a show cause notice dated 21st July 2009 demanding tax of ₹ 14,84,812/-. The order of the original authority confirmed this demand which, after adjustment, was limited to the amount recorded in the impugned order.

3. Learned Chartered Accountant for the appellant submits that as the burden had not been passed on to the customers, the benefit of cum-tax should be given to them. Furthermore, it is claimed that certain exemptions sought by them in relation to certain activities provided to the 'public works department' and for 'road projects' should be exempted.

4. It is seen from the impugned order that claim of abatement has been permitted. The claim of the appellant that the service provided to non-commercial organization should be excluded from the computation has also been dealt with by the first appellate authority. It

is pointed out in the impugned order that the definition of the taxable service does not provide any such exemption. Furthermore, the claim of exclusion of 'erection, commissioning and installation service' at the toll plaza was also examined in detail and the relevancy of the clarifications and instructions of Central Board of Excise and Customs dated 28th February 2006 and 29th February 2008 dealt with.

5. In the circumstances above, we find no reason to disturb the finding and the order of the first appellate authority. However, it is noticed that, while imposing penalty under section 78 of Finance Act, 1994, the original authority had failed to provide the mandatory option of reduced amount to be discharged contingent upon compliance of attendant condition. The first appellate authority, too, failed to extend same statutory offer. Accordingly, allowing the discharge of 25% of penalty within 30 days, the impugned order is modified to that extent for the purpose of disposal of this appeal

(Pronounced in open court)

(Dr. D M Misra)
Member (Judicial)

(C J Mathew)
Member (Technical)