CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Service Tax Appeal No. 87960 of 2018

(Arising out of Order-in-Appeal No. MKK/03/RGD/APP/2018-19 dated 10.04.2018 passed by Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigad)

M/s. Sandoz Pvt. Ltd. **Appellant**
Plot No. D-31/32, TTC Indl. Area,
Thane-Belapur Road, Turbhe,
Navi Mumbai 400 705.

Vs.

Commissioner of Cen. Excise, Belapur **Respondent**
CGO Complex, 1st floor,
Sector-10, CBD Belapur,
Navi Mumbai 400 614.

Appearance:

Shri Prasad Paranjape, Advocate, for the Appellant
Shri S.B. Mane, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/**86835/2019**

Date of Hearing: 15.01.2019
Date of Decision: 15.01.2019

Briefly stated, the facts of the case are that the appellant is an Export Oriented Unit (EOU), engaged in manufacture of excisable goods namely Bulk Drugs & formulations, falling under Chapters 29 and 30 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant is also registered under the Service Tax statute as a recipient of various taxable services. During the disputed period, the appellant had received services in respect of various repair and maintenance contracts under the category of Works Contract Service. As a recipient of service, the appellant had discharged the service tax liability on 40% of the value of contract and availed abatement on the balance amount of 60%, on the ground that the works contract relates to completion of the original work. However, the department disputed the computation and payment of service tax by the appellant and accordingly, had initiated show cause proceedings, seeking for confirmation of the demand for differential service tax amount along with interest and for imposition of penalties under various provisions of the Finance Act, 1994. The matter was adjudicated vide order dated 03.05.2017, wherein the proposals made in the show cause notice were confirmed by the jurisdictional Assistant Commissioner of Service Tax. On appeal, the learned Commissioner (Appeals) vide the impugned order dated 10.04.2018 has upheld the adjudged demands confirmed on the appellant. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. Learned Advocate appearing for the appellant, at the outset, submitted that the appellant is not contesting the service tax demand along with interest confirmed and appropriated in the adjudication order dated 03.05.2017. However, he submitted that the appellant has assailed the impugned order, so far as it has upheld penalties on the appellant under Section 77 and 78 of the Finance Act, 1994. In this context, the learned Advocate submitted that the entire amount of service tax along with interest was deposited by the appellant before initiation of the show cause proceedings and in absence of the ingredients mentioned in sub-section (4) of Section 73 *ibid*, the benefit of sub-section (3) thereunder should be available to the appellant for non-imposition of penalties.

3. On the other hand, the learned AR appearing for Revenue has reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. It is an admitted fact on record that the appellant had incorrectly computed the service tax liability and had also paid the differential amount of such liability along with interest before issuance of the show cause notice. I find that the payment particulars were duly reflected by the appellant in the periodic ST-3 returns filed before the department, which is evident from the observations made at paragraph 6 in the impugned order. Further, the department has not substantiated the allegation of fraud, collusion, misstatement etc., in arriving at the conclusion that the appellant should be exposed to the penal consequences provided under the statute. Thus, in absence of any proper substantiation with regard to involvement of the appellant in the activities concerning fraud etc., in my considered opinion, the benefit of sub-section (3) of Section 73 *ibid* should be extended to the appellant for non-issuance of show cause notice, especially for imposition of penalties.

6. In view of above, the impugned order, insofar as it relates to imposition of penalties on the appellant under Section 77 and 78 of the Finance Act, 1994 are set aside and the appeal to such extent is allowed in favour of the appellant.

(Pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

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