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

REGIONAL BENCH - COURT NO. 02

Service Tax Appeal No. 89333 of 2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-0192/18-19 dated 23.07.2018 passed by Commissioner of Central Tax (Appeals-I), Pune)

M/s. Patki-Joshi Engineers & Contractors Pvt. Ltd. .....**Appellant**
1156E, Manik Chambers,
Sykes Extension,
Kolhapur-416001

VERSUS

Commissioner of C.G.ST., Kolhapur .....**Respondent**
Vasant Plaza, Commercial Complex,
Rajaram Road, Bagal Chowk,
Kolhapur, Maharashtra-416001

Appearance:

Shri Ganesh K. Iyer, Advocate for the Appellant
Shri Sudhir B. Mane, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86866/2019

Date of Hearing: 17.09.2019
Date of Decision: 17.09.2019

Per: S.K. MOHANTY

Heard both sides and perused the records.

2. Denial of Cenvat credit on common input services used for declared service and for other than declared service is the subject matter of present dispute. The appellant is not contesting the service tax and interest demand confirmed during the adjudication proceedings. However, the appellant has filed the present appeal on the ground that the benefit of sub-section

(3) of Section 73 of the Finance Act, 1944 should be available to the appellant inasmuch as the entire adjudged amount of service tax and interest liability was discharged prior to issuance of the show cause notice. It has further been contended by the appellant that since there is no element of fraud, collusion, suppression etc., in defrauding the Government revenue, the appellant should get the benefit of sub-section (3) of Section 73 *ibid* for non imposition of penalty imposed under Section 78 ibid.

3. The period in dispute is from 2013 to 2015-16. The applicability of Notification No. 13/2016-CE (NT) dated 01.03.2016 with retrospective effect was in dispute and the Tribunal in the case of Prajapati Developers – 2019-TIOL-806-CESTAT-HYD has held that the said notification should be effective prospectively. Thus, under such circumstances, it cannot be said that availment of irregular Cenvat credit by the appellant is attributable to the reason of fraud, collusion, suppression of facts etc. Further, I also find that both the authorities below have not brought on any evidence to show that the appellant had indulged into fraudulent activities with the intention to defraud the Government revenue. Thus, under such circumstances, I am of the considered view that the benefit of sub-section (3) of Section 73 *ibid* should be available to the appellant for non imposition of penalty under Section 78 *ibid*. Therefore, the impugned order, to the extent of imposition of penalty under Section 78 *ibid* is set aside and the appeal to such extent is allowed in favour of the appellant.

4. In the result, the appeal is partly allowed.

(Dictated and pronounced in the open court)

(S.K.Mohanty)
Member (Judicial)

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