CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 87615 of 2015

[Arising out of Order-in-Original No: 34/PR. COMMR/ST-II/PK/2015-16 dated 18th August 2015 passed by the Principal Commissioner of Service Tax–II, Mumbai.

Radio One Limited
Peninsula Centre, 2nd Floor, Dr SS Rao Road
Parel (E), Mumbai – 400 012 …***Appellant***

versus

Principal Commissioner of Service Tax – II
New Central Excise Building, 115 MK Marg
Churchgate, Mumbai – 400 020 ***…Respondent***

APPEARANCE:

Shri Neerav Mainkar, Advocate for the appellant

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

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/87574 / 2019

DATE OF HEARING: 20/08/2019
DATE OF DECISION: 20/08/2019

PER: C J MATHEW

The appellant herein, M/s Radio One Limited, as provider of 'broadcasting service', was held liable to tax of ₹ 1,37,84,066, allegedly short-paid on value of ₹ 22,54,24,004 between October 2011 and March 2012 but duly discharged, in installments, between July 2012 and March 2013 upon being intimated by the jurisdictional authority. However, as they had filed the prescribed return only on 22nd January 2013 and paid the penalty for late filing only on 8th April 2014, proceedings for imposition of penalty under section 78 of Finance Act, 1994 along with confirmation of the demand of tax, under section 73 of Finance Act, 1994, and of interest under section 75 of Finance Act 1994, were initiated *vide* show cause notice dated 19th July 2013. The confirmation thereto, *vide* order-in-original no. 34/PR. COMMR/ST-II/PK/2015-16 dated 18th August 2015, has led to this appeal.

2. Learned Counsel for the appellant submits that, in the light of section 73(3) of Finance Act, 1994, initiation of proceedings solely for the purpose of imposition of penalty was not warranted and submits that the appeal is restricted to plea for setting aside the penalty in imposed in the impugned order. According to him, the ingredients of section 78 of Finance Act, 1994 had not been evidenced in the proceedings and relies upon the decision of the Tribunal in *Commissioner of Central Excise, Pune-III v. Wings Travels [2017 (47) STR 225 (Tri-Mumbai)]* and in *Sunita Tools Pvt Ltd v. Commissioner of Service Tax, Mumbai-II [2015 (37) STR 644 (Tri-Mumbai)]* as well as that of the Hon'ble High Court of Andhra

Pradesh and Telengana in *Commissioner of Central Excise, Visakhapatnam v. Tirupathi Fuels Pvt Ltd [2017 (7) GSTL 142 (AP)]* and of the Hon'ble High Court of Bombay in *Commissioner of Central Excise, Nagpur-II v. Galaxy Construction Pvt Ltd [2017 (48) STR 37 (Bom)]*.

3. In *re Wings Travels*, the appeal had been filed by Revenue in the face of finding by the original authority that the assessee was covered by section 73(3) of Finance Act, 1994. The Hon'ble High Court of Andhra Pradesh in *re Tirupathi Fuels Pvt Ltd* and the Hon'ble High Court of Bombay in *re Galaxy Construction Pvt Ltd* were dealing with disputes in which, like the present appeal, the issue was limited to discharge of liability before the issue of show cause notice. However, as pointed out by Learned Authorised Representative, notwithstanding the appellant having discharged the short-paid tax computed on the value received, the circumstances in which the adjudicating authority was compelled to take note of the failure of the appellant to file the prescribed returns within the time stipulated, including after payment of the tax dues, warranted the invoking of section 78 of Finance Act, 1994. We find that the appellant had not filed returns either during the disputed period or at any time thereafter. While mere non-filing of the returns may, by itself, constitute a technical breach, the consistent failure to do so, and thereby placing on record non-compliance thereof, is not so trivial as

to be brushed aside.

4. In view of the above, we find no merit in the appeal which is dismissed.

(Pronounced in the open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*