CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Service Tax Appeal No. 88847 of 2018

(Arising out of Order-in-Appeal No. PVNS/101/APPEALS THANE/MC/2018-19 dated 06.06.2018 passed by Commissioner (Appeals) Thane Central Tax & GST, Mumbai)

Interface Communication Private Limited .....**Appellant**
Phoenix House Unit,
A206 2nd Floor Senapati Bapat Marg,
Phoenix Mill Complex, Lower Parel,
Mumbai 400 013.

VERSUS

Commissioner of CGST, Mumbai Central .....**Respondent**
4th Floor, C. Ex. Building, Churchgate,
Mumbai – 400 020.

Appearance:

Ms. Puloma Dalal, C.A., for the Appellant
Shri Saikrishna Hatangadi, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/87016/2021

Date of Hearing : 03.09.2021
Date of Decision : 25.10.2021

PER : DR. SUVENDU KUMAR PATI

Confirmation of interest, on delayed payment of service tax through Cenvat Credit account, by the Commissioner (Appeals) in his Order No. PVNS/101/APPEALS THANE/MC/2018-19 dated 06.06.2018 is assailed in this appeal.

2. Factual backdrop of the case, in a nutshell, is that during the course of audit, on scrutiny of financial records of the appellant, it was noticed that appellant failed to discharge tax liability on the due date and it was put to notice under Rule 6 of Service Tax Rules, 1994 for not discharging its duty liability on the due dates proposing interest of Rs.7,09,160/- on delayed payment made during the period between October, 2006 to September, 2010. On reply from the appellant show cause notice was adjudicated upon duty demand was confirmed by the adjudicating authority and appellant appeal before the Commissioner (Appeals), Thane Central Tax & GST, Mumbai, yielded no fruitful result.

3. In the memo of appeal and during the course of hearing of the appeal learned Chartered Accountant for the appellant Ms. Puloma Dalal, in submitting case laws on preliminary of *Oil & Natural Gas Corporation Ltd. Vs. Commissioner of Central Excise & S.T. Surat [2015 (38) STR 867 (Tri.Ahmd.)], Tata Business Support Services Ltd. Vs. Commr. Of S.T. Hyderabad-II [2017 (52) S.T.R. 346 (Tri.-Hyd.)]* and *M/s. Maansarovar Motors Pvt. Ltd. [2020-TIOL-1846-HC-MAD-GST]*, submitted that it is an established fact that when the assessee has sufficient credit in its cenvat account, no interest is payable for delayed payment.

4. *Per contra*, learned Authorized Representative for the respondent-department Shri Saikrishna Hatangadi, with reference to the judicial decisions of the Tribunal consistently made in the cases of *Electric Developers Ltd. Vs. Commissioner of Central Excise, Goa [2019 (24) G.S.T.L. 459 (Tri.-Mumbai)], Commissioner of Central Excise, Indore Vs. Metalman Industries Ltd. [2016 (340) E.L.T. 524 (Tri.-Del.)], Commissioner of C. Ex. & Cus., Surat-I Vs. Krishak Bharti Cooperative Ltd. [2010 (257) E.L.T. 284 (Tri.Ahmd.)] and Parle Products Pvt. Ltd. Vs. Commissioner of Central Excise, Mumbai [2017 (358) E.L.T. 798 (Tri.-Mumbai)]* argued that in the event of delayed payment of service tax irrespective whether it is payable from Cenvat Credit account or in cash, interest is payable, in view of clear language of Section 75 of the Finance Act, 1994, for which he sought no interference in the order passed by the Commissioner (Appeals).

5. I have gone through the case record, written note of submissions, relevant provision of law and the relied upon case laws. As can be noticed from the show cause issued to the appellant, interest is proposed to be levied on the appellant for the period from October 2006 to September 2010 and the show cause was issued on 19.03.2012, during which period the respondent-department was only empowered to demand tax due for a period of one year unless, there is allegation of fraud, mis-representation, collusion, mis-statement, suppression of fact or contravention to provisions of the Finance Act is made with proposal for penalty under Section 78 of the Finance Act, 1994. No such penalty was proposed in the show cause notice nor even there is any allegation of wilful withholding of payment of service tax on any of the above referred grounds was made. This being the facts on record there is no requirement to give a finding that under Section 75 of the Finance Act, interest is a natural corollary and consequence for any default of payment of service tax within the stipulated time. On the contrary, it can very well be said that the tax liability or its interest component can never be enforced and recovered from the assessee beyond the period from one year without any allegation of wilful non-payment on the ground of fraud, mis-statement, collusion etc. as noted above. Hence the order.

ORDER

6. Appeal is allowed and the order passed by the Commissioner (Appeals), Thane Central Tax & GST, Mumbai vide order-in-appeal No. PVNS/101/APPEALS THANE/MC/2018-19 dated 06.06.2018 confirming the demand for payment of interest is hereby set aside.

(Order pronounced in the open court on 25.10.20212)

(Dr.Suvendu Kumar Pati)
Member (Judicial)

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