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

Appeal No. ST / 87244 / 2018

(Arising out of Order-in-original No 13/RMK/COMMR/Belapur/2017-18 dated 28.02.2018 of the Commissioner CGST & Central Excise Belapur)

REALINCE COMMUNICATION INFRASTRUCTURE LIMITED **......Appellant**
DAKC. C Block, 1st Floor
Koparkhairane
Navi Mumbai
Versus

COMMISSIONER CGST & CENTRAL EXCISE, **.....Respondent**
1st Floor CGO Complex
CBD BELAPUR
Navi Mumbai 400614

Present for the-
Appellant : None
Respondent : Shri Nitin Ranjan, Deputy Commissioner, Authorized Representative

CORAM: HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

Date of Hearing : 22 December, 2021
Date of Decision: 22 December 2021

FINAL ORDER No **A/87411/2021**

This appeal is directed against order in original No 13/RMK/COMMR/Belapur/2017-18 dated 28.02.2018 2018 of the Commissioner CGST & Central Excise Belapur. By the impugned order Commissioner has held as follows:

"Order

a) I confirm the demand of Rs.52,25,16,910/- (Rupees Fifty Two Crores Twenty Five Lakhs Sixteen Thousand Nine Hundred Ten only) under the provisions of Section 73(2) of the Finance Act, 1994 and order recovery of the same under the provisions of Section 73(2) of the Finance Act, 1994. I drop the demand of Rs.16,50,05,340/- (Rupees Sixteen Crores Fifty Lakhs Five Thousand Three Hundred Forty only), on the ground of

1. *limitation*

b) *I direct the noticee to pay appropriate interest as applicable under Section 75 of the Finance Act, 1994 in respect of the demand confirmed*

2. *at Sr. No. 9(a) above.*

c) *I impose a penalty of Rs.52,25,16,910/- (Rupees Fifty Two Crore Twenty Five Lakhs Sixteen Thousand Nine Hundred Ten only) on the noticee under the provisions of Section 78(1) of the Finance Act, 1994. As per the sub-clause (ii) to second proviso to Section 78 of the Finance Act, 1994, if the Service Tax amount along with the appropriate interest is paid within the period of 30 days from the date of communication of this order the penalty would be reduced to 25% of the Service Tax determined at Sr. No. (a) above. The benefit of reduced penalty would be available only if the amount of reduced penalty so determined along with the Service Tax and appropriate interest has also been paid within the period of 30 days from the date of communication of this order.*

d) *I do not impose penalty under Section 76 of the Finance Act, 1994.*

e) *I do not impose penalty under Section 77 of the Finance Act, 1994 as none of the provisions made under the said Section are contravened as stated in the SCN while proposing penalty under this Section*."

2.1 None appeared on the behalf of Appellants. When the matter was heard on 07.11.2019, Ms Bhagyashree Bhave Advocate appeared. After hearing her, bench recorded as follows:

"On submission of Learned Counsel that the proceedings for insolvency resolution process has commenced before the National Company Law Authority, the hearing of appeal is adjourned 13th May 2020." From that time onwards none has appeared in the matter.

2.2 We have heard Shri Nitin Ranjan, Deputy Commissioner, Authorized Representative for the revenue.

3.1 We have considered the impugned order with the submissions made in appeal and during the course of argument.

3.2 Rule 22 of Customs Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982 provides as follows:

*“**RULE 22. Continuance of proceedings after death or adjudication as an insolvent of a party to the appeal or application. —***

Where in any proceedings the appellant or applicant or a respondent dies or is adjudicated as an insolvent or in the case of a company, is being wound up, the appeal or application shall abate, unless an application is made for continuance of such proceedings by or against the successor-in-interest, the executor, administrator, receiver, liquidator or other legal representative of the appellant or applicant or respondent, as the case may be :

Provided that every such application shall be made within a period of sixty days of the occurrence of the event :

Provided further that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period so specified, allow it to be presented within such further period as it may deem fit.”

3.3 In the present case till date no application for continuation of proceeding have been filed by or on behalf of the resolution professional i.e. successor in interest or legal representative of appellants, hence the appeal abates in terms of the Rule 22.

4.1 Thus appeal filed abates in terms of Rule 22 of Customs Excise and Service Tax Appellate Tribunal (Procedure) Rules, 1982.

(Operative portion of order pronounced in open court)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

(DR. SUVENDU KUMAR PATI)
MEMBER (JUDICIAL)