CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 85851 OF 2022

[Arising out of Order-in-Original No: 39/RC/COMMR/CGST AUDIT-II/20-21 dated 11th February 2021 passed by the Commissioner of GST & Central Excise (Audit-II), Mumbai.]

Gammon Engineers and Contractors Pvt Ltd
Gammon House, Veer Savarkar Marg, Prabhadevi
Mumbai – 400025 … ***Appellant***

versus

Commissioner of CGST & Central Excise
Mumbai Central
GST Bhavan, MK Road, Churchgate, Mumbai - 400020 ***…Respondent***

APPEARANCE:

Shri Mihir Mehta and Shri Nargolkar, Advocates for appellant

Shri Dhananjay Dahiwale, Deputy Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: 85691/2025

DATE OF HEARING: 07/03/2025
DATE OF DECISION: 07/03/2025

This appeal, against order[1] of Commissioner of GST & Central Excise (Audit-II), Mumbai, challenges the competence to issue notice,

[1] [order-in-original no. 39/RC/COMMR/CGST AUDIT-II/20-21 dated 11th February 2021]

in circumstances of tax liability having been discharged, under section 73 of Finance Act, 1994 as also empowerment to impose penalty under section 76 of Finance Act, 1994 which is intended only for evasion of tax liability.

2. Though, the foundation of the arguments of the Learned Counsel for appellant is his submission that section 76 of Finance Act, 1994 could not have been invoked except when recovery is enabled under section 73 of Finance Act, 1994, it was further submitted that, with discharge of duty liability in full, there was no scope, owing to section 73(1) of Finance Act, 1994, for proceedings to have been initiated at all. He submitted that tax liability, though discharged belatedly, was not evidenced as ‘short-paid’ or ‘not paid’ when the notice was issued. According to him, the show cause notice itself was erroneous inasmuch as the empowerment to impose penalty under section 76 of Finance Act, 1994 had been varied by amendment through Finance Act, 2015 owing to which the penalty, as directed by the impugned order, was not within such empowerment. Learned Counsel also pointed out there is no finding whatsoever in the impugned order which permitted invoking of section 76 of Finance Act, 1994 and reasons assigned in the impugned order has nothing to do with failure to discharge duty liability justify imposition of penalty.

3. Learned Authorised Representative reiterated the findings in the

impugned order.

4. M/s Gammon Engineers and Contractors Pvt Ltd, had, in discharge of their tax liability, arising from deeming fiction of law transferring responsibility to the recipient for procurement of the said service prior to ‘negative list’ and by transaction being deemed to have been provided in the ‘taxable territory’ in accordance with Place of Provision of Service Rules, 2012 for the period thereafter, discharged their liability in full as on date of issue of show cause notice.

5. It is seen that, while penalty has been imposed under section 76 in terms of section 73(4) Finance Act, 1994, the proceedings initiated could have been continued only in circumstances that warranted imposition of penalty under section 78 of Finance Act, 1994 which was not even a proposal in the show cause notice and, consequently, the entire proceedings have been initiated without authority of law and in breach of section 73(3) of Finance Act, 1994.

6. For the above reason, the impugned order is set aside to allow the appeal.

(Dictated and Pronounced in Open Court)

(C J MATHEW)
Member (Technical)

**/as*