CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Miscellaneous Application No. 85407 of 2025
(on behalf of Appellant)

In

Service Tax Appeal No. 85077 of 2017

(Arising out of Order-in-Original No. PUN-SVTAX-000-COM-016-16-17 dated 17.10.2016 passed by the Commissioner of Service Tax, Pune)

M/s Proxima Creations .... **Appellant**
364-365, Jangali Maharaj Road,
Near Standard Chartered Bank,
Shivaji Nagar, Pune – 411 016

Versus

Commissioner of Service Tax, Pune .... **Respondent**
41/A, ICE House, Opp. Wadia College,
Sassoon Road, Pune – 411 001

AND

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M/s Proxima Creations .... **Appellant**
364-365, Jangali Maharaj Road,
Near Standard Chartered Bank,
Shivaji Nagar, Pune – 411 016

Versus

The Commissioner, Centra Tax, Pune-II .... **Respondent**
1st Floor, GST Bhavan
41/A, Sassoon Road, Opp. Wadia College,
Pune – 411 001

Appearance:

Shri M.P. Joshi, Advocate for the Appellant
Shri C.S. Pavan, Auth. Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85921/2025

Date of Hearing: 10.06.2025

Date of Decision: 10.06.2025

Per: S.K. Mohanty

Heard both sides and examined the case records.

2. The appellants have filed this miscellaneous application, seeking change of name and address of the respondent in cause title to the appeal filed by the appellants. The prayer made by the appellants is considered and accordingly, Registry is directed to incorporate the following changed name and address of the respondent in the appeal records for the purpose of disposal of the appeal:-

"The *Commissioner, Central Tax, Pune-II Commissionerate*
1st Floor, GST Bhavan,
41/A, Sassoon Road, Opp. Wadia College
Pune – 411 001."

The miscellaneous application stands disposed of.

3. Brief facts of the case are that the appellants are engaged in providing construction services to their various clients, which is taxable under the category of 'Construction of Residential Complex Service' (w.e.f. 16.06.2005) and 'Commercial and Industrial Construction Service' (w.e.f. 10.09.2004). During the course of investigation conducted by the preventive unit of the Central Excise and Service Tax Commissionerate, it was found that the appellants did not pay the service tax in respect of such taxable services provided by them to the recipients of such services. Accordingly, show cause proceedings were initiated against the appellants, seeking confirmation of the service tax demands on them. The matter arising out of the show-cause notice (SCN) dated 20.04.2015 was adjudicated by the learned Commissioner of Service Tax, Pune vide the impugned order dated 17.10.2016, wherein service tax demand of Rs.1,70,19,119/- was confirmed along with interest and also penalties were imposed under Section 77 and 78 of the Finance Act, 1994 on the appellants. Feeling aggrieved with the impugned order dated 17.10.2016, the appellants have filed this appeal on the ground that the service tax amount deposited during the course of investigation and prior to issuance of show-cause notice should not be exposed to the consequences provided under Section 78 *ibid* for imposition of equal amount of penalty.

4. Learned Advocate appearing for the appellants concedes that the appellants are not contesting the service tax demand along with interest confirmed against them in the impugned order. He submitted that the appellants' grievance is to the extent of imposition of penalty under Section 78 *ibid*. It is the contention of the learned Advocate that since the service tax amount was voluntarily paid by the appellants before issuance of the

show-cause notice, the charges of fraud, suppression of fact, willful mis-statement etc., cannot be leveled against the appellants for imposition of penalty under Section 78 *ibid*.

5. The appellants have contended that before the date of issuance of the SCN, the appellants had deposited an amount of Rs.1,15,59,807/-. We also find that, as against the claim of the appellants regarding payment of service tax during the course of investigation, an amount of Rs.1,14,35,300/- was appropriated in the impugned order dated 17.10.2016 passed by the learned adjudicating authority. Since the service tax amount was *suo motu* paid by the appellants and there is no proper substantiation in the impugned order to justify invocation of the provisions contained in Section 78 ibid inasmuch as, no fact findings with regard to involvement of the ingredients viz., fraud, suppression of facts, willful mis-statement etc., we are of the view that the amount so paid, as has been appropriated in the impugned order, should not be exposed to the penal consequences provided under Section 78 *ibid*. Therefore, the impugned order passed by the learned adjudicating authority is required to be modified, to the extent of imposition of penalty under Section 78 ibid on the amount of service tax, which was not paid prior to the date of issuance of the SCN. For non-payment of the service tax amount, if any, within the prescribed time period, the appellants are also liable for payment of interest thereon.

6. In view of the above, the impugned order to the extent it has imposed the penalty on the appellants under Section 78 *ibid* on the amount deposited prior to issuance of show-cause notice is set aside and the appeal to such extent is allowed in favour of the appellants.

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

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

Sinha