

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 53694 of 2018-SM

(Arising out of order-in-appeal No. BHO-EXCUS-002-APP-249-18-19 dated 17.07.2018 passed by the Commissioner (Appeals), Central Goods & Service Tax, Central Excise and Customs, Raipur).

M/s G & G Ispat (P) Limited

C/o Nirmal Kumar Agrawal
11, Recreation Ground
Choubey Colony, Raipur, CG - 492001.

Appellant

VERSUS

Commissioner, Central Excise, Customs

GST Bhawan, Tikra Para,
Dhamtari Road
Raipur (Chhattisgarh)-492001.

Respondent

APPEARANCE:

None for the appellant

Sh. Ravi Kapur, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50336/2022

**DATE OF HEARING: 22.11.2021
DATE OF DECISION: 18.04.2022**

ANIL CHOUDHARY:

The appellant is absent on call. From the record, it is seen that the appellant is not appearing for the last several dates. Accordingly, the matter is taken up for disposal by hearing the learned Authorised Representative for the Revenue and perusal of the record.

2. Brief facts of the case are that the appellant -assessee is a manufacturer of M.S. Angle, M.S. Channel, M.S. Ingots etc. They also

received various input services like GTA, Manpower Supply Agency Service and Security Service etc. Appellant is registered with the Department and have been making their compliance regularly.

3. Pursuant to audit for the period September, 2013 to March, 2015 in the month of April, 2015, it appeared to Revenue that appellant have not discharged service tax liability under reverse charge mechanism on the input services being GTA, Manpower Supply Agency and Security Service. Accordingly, for the period April, 2014 to March, 2015 total service tax under these three heads under the reverse charge mechanism, demanded for Rs.1,97,054/- vide show cause notice dated 01.03.2017. Another demand was proposed in the show cause notice for late filing of ST-3 returns for the period October, 2013 to March, 2014 (Rs.500/-) and April, 2014 to September, 2014 (Rs.20,000/-) observing that there is delay of about five days in filing the return for the half year ended March, 2014 and further observing that the return for half year ended September, 2014 have not yet been filed. Thus, the total late fee of Rs.20,500/- was proposed under Rule 7(C) of Service Tax Rules. Further, penalty was proposed under Section 76, 77 and 78 of the Act. As the appellant has not filed reply to show cause notice, vide order-in-original dated 13.11.2017 ex-parte adjudication order was passed confirming the proposed demands. Further, penalty of Rs.1,97,054/- was imposed under Section 78 and penalty of Rs.20,500/- was imposed for late filing of return under Section 70 read with Rule 7(C). Further, penalty of Rs. 10,000/- was proposed under Section 77 of the Act.

4. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) inter alia urging that they had already deposited the service tax amount of Rs.1,97,054/- vide challan No. 50240 and 50237 both dated 31.10.2015, which was prior to the issue of show cause notice dated 01.03.2017. It is also urged that the appellant had mentioned the facts of payment of service tax in their periodical return. Further, it was also urged that in the facts and circumstances of the case no penalty is imposable under Section 77, 78 and Section 70 of the Act. It was also urged that the return of financial year 2014-15 was filed on 21.01.2016. It was also urged that after receipt of show cause notice the appellant informed the Adjudicating Authority about the facts of tax having been paid, but the same has not been considered. It was further urged that the situation is revenue neutral as appellant is entitled to take cenvat credit of the service tax paid under reverse charge mechanism, and further they have cleared their finished goods on payment of duty. It was also urged that the appellant company was facing financial crisis for the last few years due to glut in the steel industry and eventually shut their operation from February, 2017.

5. Learned Commissioner (Appeals) has observed that though the appellant has paid service tax but had not paid the interest under Section 75. Hence, these facts do not warrant any interference on imposition of penalty under Section 78 of the Act, as it is a clear case of wilful suppression with intent to evade payment of tax. It was further observed that late fee under Rule 7(C) read with Section 70 has been

rightly imposed. Penalty under Section 77 was also upheld. Accordingly, the appeal was rejected.

6. Being aggrieved, the appellant preferred appeal before this Tribunal reiterating the submissions in the grounds noticed hereinabove.

7. Learned Authorised Representative appearing for the Revenue supports the impugned order.

8. Having considered the rival contentions, I find that the appellant admittedly has paid the service tax chargeable from them under reverse charge mechanism, on 31.10.2015, which was reflected in the return filed for the period 2014-15, which was filed on 21.01.2016. Further, appellant has also informed this fact of tax having been deposited vide letter dated 21.03.2017 before the Adjudicating Authority. Further, it appeared that the Adjudicating Authority has failed to take notice of the same as such representation has not been considered in the adjudication order. I further find that the appellant is manufacturing and clearing dutiable goods and are entitled to take cenvat credit of service tax payable under reverse charge mechanism. Hence, the situation is revenue neutral. In this view of the matter, I set aside the demand of Rs. 1,97,054/- as well as the penalty imposed under Section 78 of equal amount.

9. So far penalty under Section 70 read with Rule 7(C) is concerned, the same is excessive and is reduced to Rs.5,000/-.

10. So far penalty under Section 77 is concerned, I find that the same is imposed for alleged violation of Rule 5(2) of Service Tax Rules,

which provides that every assessee soon after filing of their ST-3 return for the first time shall provide a list to the Range Superintendent as regards the details of records, books of accounts maintained by them. I further find that there is no alleged violation of the provisions of Section 66B and Section 68 read with Rule 5(2). Accordingly, penalty of Rs.10,000/- under Section 77 is set aside.

11. Thus, the appeal is allowed in view of my findings as above and the impugned order stands modified accordingly.

(Pronounced on 18.04.2022).

(Anil Choudhary)
Member (Judicial)