

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No.57314 of 2013

[Arising out of Order-in-Appeal No. 102/A/ST/CHD-II/2012 dated 27.02.2013 passed by the Commissioner (Appeals), Central Excise and Service Tax, Chandigarh]

M/s TICS Project Consultancy Pvt. Ltd.

13, Ghuman Colony, Sant Nagar, Patiala,
Punjab-147001

.....Appellant

VERSUS

**Commissioner of Central Excise and
Service Tax, Chandigarh-II**

Plot No.19, Central Revenue Building, Sector-17C,
Chandigarh-160017

.....Respondent

APPEARANCE:

Shri Joy Kumar, Advocate for the Appellant

Shri Shivam Syal, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60664/2024

DATE OF HEARING: 09.12.2024

DATE OF DECISION: 13.12.2024

P. ANJANI KUMAR:

The appellant, M/s TICS Projects Consultancy Pvt. Ltd., are engaged in the provision of Consulting Engineering Services and are registered with the Department. During the period 01.04.2009 to 31.03.2010, the appellants have not discharged the applicable service tax on the services rendered by them; Central Excise

Division, Patiala vide various letters requested the appellant to supply copies of balance sheets, ledger accounts etc. and to deposit the applicable service tax with interest; the appellants have deposited the amount of Rs.44,17,569/- along with interest. A Show Cause Notice dated 14.10.2011 was issued to the appellants seeking to demand service tax of Rs.46,36,744/- and seeking to impose penalties while seeking to appropriate the amount paid by the appellants; original authority vide Order dated 06.06.2012 confirmed the demand of service tax and imposed equal penalty under Section 78 and penalty of Rs.200/- per day in terms of Section 77 for failure to file Returns. Learned Commissioner (Appeals), vide impugned order dated 27.02.2013, upheld the OIO and rejected the appeal filed by the appellants. Hence, this appeal.

2. Shri Joy Kumar, learned counsel for the appellant, submits that the appellants had some financial difficulties during the relevant period and senior officers of the company who were in charge of the affairs of the company resigned and therefore, there was a delay in the payment of service tax. As soon as the company became aware of the non-payment of service tax, they have deposited the same during the period 02.02.2010 to 24.09.2010 and reflected the same in the monthly Returns filed for the period 2009-10. He submits that Revenue has improperly invoked extended. There was no suppression of fact etc. on the part of the appellant to cause invocation of extended period. The fact that the audit of the accounts of the company was conducted for the period April 2006 to

March 2011 and that no discrepancy was found during the audit, proves that the appellant has not suppressed any facts. He further submits that the adjudicating authority proceeded to issue Show Cause Notice even though the service tax liability stands discharged before issuance of Show Cause Notice. Moreover, the adjudicating authority did not provide the opportunity to pay 25% of the penalty within one month of confirmation of the duty liability.

3. Learned counsel further submits that service tax liability of Rs.2,19,175/- was fastened on the appellants mistakenly on account of the reimbursable expenditure on diesel that was used by the appellants in the gensets used for the maintenance of the towers. It is clear from the agreement that the expenses incurred on the diesel consumed shall be reimbursed to the appellants on actual basis. In support of his arguments, learned counsel relies on the *Intercontinental Consultants & Technocrats Pvt. Ltd. – 2013 (29) STR 9 (Del.)* [affirmed by Hon'ble Supreme Court – 2018 (10) GSTL 401 (SC)] and *C.C.I. Logistics Ltd. – 2021 (54) GSTL 27 (Tri. Kolkata)*.

4. Shri Shivam Syal, learned Authorized Representative for the Department, takes us through Rule 5 of Service Tax (Determination of Value) Rules, 2006 and submits that it is not the case of the appellants that service tax has been paid on their own; Central Excise Division, Patiala has written a series of letters dated 04.03.2010, 09.03.2010, 16.03.2010, 08.04.2010, 01.06.2010,

30.06.2010, 09.08.2010, 23.09.2010, 29.09.2010 and 16.03.2011 requesting the appellant to submit copies of balance sheets etc. and to deposit the requisite service tax with interest; summons dated 21.04.2010 were also issued to the appellants; therefore, it cannot be said that the appellants have paid the service tax on their own volition.

5. Learned Authorized Representative further submits that the appellant has also not filed service tax Returns. As the Department was already seized of the matter, Audit held for the period 2006 to 2011 did not specifically mention the non-payment of service tax by the appellants and this in itself cannot be a defence of the appellant to say that they have not suppressed any material facts with intent to evade payment of service tax. The mala fide intent of the appellant is manifest in the fact that the appellants continued to collect the service tax from their customers and did not deposit the same with the Government. The plea taken by the appellants stating that during the relevant period, concerned officers of the company resigned cannot mitigate the offence committed by the appellants. He submits that as the service tax was not paid on their own but after continuous correspondence and summons by the Department, the plea that Show Cause Notice has been issued despite payment of service tax is not acceptable. The service tax paid require to be confirmed by a speaking order. He further submits that there is no provision that the adjudicating authority is required to give an option to the appellants to pay 25% of the penalty; in fact, it is the

appellant who was required to avail the provision of Section 78 of Finance Act, 1994.

6. Learned Authorized Representative relies on the following cases and submits that the adjudicating authority has rightly imposed the penalty; the appellant having not availed the option to pay 25% of the penalty within the stipulated period, cannot take the plea at this juncture:

- Peninsula Security Services – 2010 (18) STR 778 (Tri. Chennai)
- Yogi Auto Care Pvt. Ltd. – 2009 (14) STR 274 (Tri. Ahmd.)
- Bhargava Constructions – 2019 (26) GSTL 239 (Tri. All.)
- G.B Engineering Enterprises (P) Ltd. – 2007 (8) STR 638 (Tri. Chennai)

7. Heard both sides and perused the records of the case. Brief issues that need our consideration are as to whether the appellant is required to pay penalty under Section 78 of Finance Act, 1994 and as to whether the service tax liability of Rs.2,19,175/-, on account of diesel charges reimbursed, can be fastened to the appellants. Coming to the second issue first, we find from the agreement, in Annexure 1 Part 3 that *"No advance for diesel/consumables shall be paid to service provider, however bills for the same will be re-imbursed on actual basis within 72 hrs. subject to verification and approval by the head of the Network O&M Dept. In case within 72hrs bills are not re-imbursed by VESL, VESL will make ad hoc payment on the basis of submitted bills subject to verification and approval by the head of the Network O&M Dept."*From this it is very

clear that the expenses on account of diesel are reimbursable to the appellants; therefore, the cost of the same cannot be included in the assessable value for payment of service tax purposes following the decision of the Hon'ble Apex Court in the case of Intercontinental Consultants and Technocrats Pvt. Ltd. (supra).

8. Coming to the issue of penalty imposed under Section 78, we find that Revenue argues that the appellant did not pay applicable service tax, did not file Returns during the relevant period; only after the Revenue issued series of letters, the appellants deposited the tax with interest; the appellants are not new to the service tax and were, in fact, paying service tax and filing Returns before and after the impugned period; the appellants have recovered the service tax from their customers and therefore, there is no reason for them not to deposit the same with the Government Exchequer; there can be no better manifestation of intent to evade payment of tax than in this case. On the other hand, the appellants submit that during the relevant period, they were facing financial problems and key persons in charge of taxation have resigned from the company and therefore, there was a bona fide lapse on their part; they further submits that they have not suppressed any material fact and even the Audit team did not find any problem with their accounts and therefore, extended period could not have been invoked and penalty under Section 78 could not have been imposed.

9. We find that the argument of the appellants is not acceptable. It is not the case of the appellant that they were not aware of the provisions of service tax; there was lot of confusion in the industry about the applicability of service tax undertaken by them and that the allegations were based on extraneous facts. We find that the appellants are regular assessee having registered with Service Tax Department. It is only during a certain period between 2008 to 2010, the appellants did not remit the service tax due. It is an undeniable fact that the said service tax has been recovered by the appellants from their customers. As it has been recovered from their customers, the plea of financial difficulty has no substance. The appellants should have deposited the service tax at least as and when their customers paid them. Similarly, it is very difficult to believe that resignation of a couple of officers during a particular period resulted in non-payment of service tax, more so, looking into the fact that there is nothing on record to show that other activities of the company have been hampered due to such resignations. It is beyond comprehension that only payment of service tax gets disturbed.

10. Moreover, we find that the appellants have taken the plea that as the Audit team did not find any discrepancy, extended period cannot be invoked. We find considerable force in the submissions of the learned Authorized Representative for the Department that the audit did not consider the issue as the Department was otherwise seized of the same and has written number of letters to the appellant and only as a consequence, the appellants have

discharged their tax liability along with interest. Argument on the basis of ST-3 Returns filed after payment of tax only after being asked to pay duty by the Department is of no avail.

11. It is the argument of the Department that nothing is brought on record to show the bona fides of the appellants; therefore, extended period has been rightly invoked and penalty under Section 78 has been rightly imposed; no option is required to be given by the authority and it is for the appellants to avail the facility. We find that the appellants have deposited the requisite service tax along with interest albeit after being informed by the Department by a series of letters. We find that the appellants have pleaded financial difficulties and resignation of senior officers of the company and submitted that there was delay in payment of the service tax. We find that the Department relies on the judgment of the Tribunal in the case of Bhargava Constructions (*supra*); however, we find that the facts of the case are slightly different and it is not on record whether duty was paid in that case before the issuance of Show Cause Notice, though the point of financial constraints is common in both cases. In the facts and circumstances of the case, we find that the interest of justice would be served if the appellant is given an option to pay 25% of the penalty. We find that the appellants have deposited 25% of the penalty as per the Miscellaneous Order dated 29.07.2013 given by this Bench and duty and interest have already been paid.

12. In view of the above, the appeal is partly allowed restricting the penalty imposed under Section 78 to 25% of the amount specified in the Order-in-Original.

(Order pronounced in the open court on 13/12/2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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