

**Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad**

REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.11108 of 2013

(Arising out of OIA-PJ/411/VDR-I/2012-13 dated 23/01/2013 passed by Commissioner of Central Excise, Customs and Service Tax-VADODARA-I)

Gujarat Alkalies And Chemicals Ltd

.....Appellant

P.O. Petrochemicals
P.O. Petrochemicals
VADODARA, GUJARAT

VERSUS

C.C.E. & S.T.-Vadodara-i

.....Respondent

1st Floor...Central Excise Building,
Race Course Circle,
Vadodara, Gujarat-390007

APPEARANCE:

Shri Dhaval Shah, Advocate for the Appellant
Shri Rajesh Agarwal, Superintendent (AR) for the Respondent

**CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU**

Final Order No. A/ 10240 /2023

DATE OF HEARING: 18.01.2023
DATE OF DECISION: 07.02.2023

RAMESH NAIR

The issue involved in the present case is that whether penalty imposed under Section 76,77, &78 can be set aside invoking Section 80 under the facts and circumstances of the present case.

02. Shri Dhaval Shah, learned Counsel appearing on behalf of the appellant submits that the appellant is not contesting the service tax demand which was already paid along with interest therefore, the case should have been settled without issuance of the show cause notice in terms of Section 73(3). He submits that though the show cause notice was issued invoking the extended period of demand but there is no suppression of fact on the part of the appellant. He submits that the appellant is a government organization therefore, as a government company there cannot be mala fide either of individual or of company therefore, the penalties are liable to be set aside invoking Section 80. He placed reliance on the following judgments:-

- JSW STEELS LIMITED- 2017 (6) G.S.T.L.397 (Mad.)
- INDIA GLYCOLS LTD.- 2017 (4) G.S.T.L. 415 (Tri.-Del.)
- MURLI INDUSTRIES LTD.- 2015 (39) S.T.R. 1033 (Tri.-Bom.)

03. Shri Rajesh Agarwal, learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding of the impugned order.

04. We have carefully considered the submissions made by both the sides and perused the records. In the present case limited issue to be decided by us is whether the appellant is liable for penalty imposed under Section 76, 77 and 78. We find that the appellant is a government company and the issue on merit is non-payment of service tax on the services related to external commercial borrowing from the ICICI Bank- Hong Kong. We find that being a government company admittedly the appellant have recorded all the transaction in their books of account and as and when the short payment of service tax was pointed out by the department, the appellant have deposited the service tax along with interest thereon without raising any objection. In these facts and circumstances of the case, the suppression, mis-declaration, etc. cannot be attributed to the appellant. The appellant have also intimated the department about the payment of entire service tax and interest thereon therefore, in our considered view the case is squarely covered by Section 73(3) of the Finance Act, 1994 according to which on payment of service tax and interest, no show cause notice should have been issued and the case stand closed on such payment. Accordingly, no penalty either can be proposed or can be imposed.

05. We are therefore of the considered view that penalties under Section 76, 77 & 78 imposed by the lower authorities are liable to be set aside hence, we set aside the penalty invoking Section 73(3) of the Finance Act, 1994. The payment of service tax and interest paid by the appellant is maintained. The impugned order is modified to the above extent. Appeal is allowed in the above terms.

(Pronounced in the open court on 07.02.2023)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)