

**IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL, CHENNAI**

Service Tax Appeal No.40431 of 2022

(Arising out of Order-in-Original No. 64/2022. CH. N. GST dated 29.4.2022 passed by the Principal Commissioner of GST & Central Excise, Chennai)

**M/s. State Industries Promotion
Corporation of Tamil Nadu Ltd.**

Plot No. 19-A, Lakshmipathi Road
Egmore, Chennai – 600 008.

Appellant

Vs.

Commissioner of GST & Central Excise

Chennai North Commissionerate
No. 26/1, Mahatma Gandhi Road
Chennai – 600 034.
Custom House, New Harbour Estate
Tuticorin – 628004.

Respondent

APPEARANCE:

Shri Abhishek S. Ganahari, Consultant for the Appellant
Smt. Sridevi Tritula, ADC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Final Order No. **40338 / 2022**

Date of Hearing : 26.09.2022

Date of Decision: 26.09.2022

Brief facts are that the appellant which is an undertaking of the State Government of Tamil Nadu are engaged in activities in the nature of acquisition of land, development of industrial complexes / parks / work centres etc. They are registered with the Service Tax Commissionerate also. During the time of audit, it was found that they have short-paid service tax under various categories. Show Cause Notice was issued proposing to demand the service tax under various categories of services along with

interest and also for imposing penalty. After due process of law, the original authority confirmed part of the demand and dropped part of the demand that has been raised in the Show Cause Notice. The original authority also imposed penalty in regard to the demands confirmed. Aggrieved by the penalties imposed, the appellant is now before the Tribunal.

2. The learned consultant Shri Abhishek S. Ganahari appeared and argued for the appellant. He submitted that the Show Cause Notice has been issued pursuant to audit verification by the department. The entire figures in regard to the demand has been obtained from the accounts maintained by the appellant. There is no evidence adduced by the department so as to prove that the appellant has suppressed facts with intent to evade payment of service tax. The entire issue was with regard to classification of various services and also the payment of tax in respect to these categories of services. The appellant has accepted the demand and paid up the entire demand along with interest. Further, the appellant is an undertaking of the State Government of Tamil Nadu and no malafide intention can be alleged against the appellant. He relied upon the following case laws:-

- a. *Continental Foundation Joint Venture Vs. CCE reported in 2007 (216) ELT 177 (SC)*
- b. *Gita Enterprises Vs. Commissioner of Customs and Central Excise reported in 2017-TIOL-761-CESTAT-HYD*

c. Kerala Co-operative Deposit Guarantee Fund Board Vs. CCE reported in 2020 (2) TMI 569 – CESTAT Bangalore

He prayed that the appeal may be allowed.

3. The learned AR Smt. Sridevi Tritula supported the findings in the impugned order. It is submitted by her that short-payment of service tax would not have come to light if the department had not conducted the audit.

4. Heard both sides.

5. The appellant is contesting only the penalties imposed under sec. 78 of the Finance Act, 1994. It is brought out from facts and evidences that the Show Cause Notice has been issued pursuant to the periodical audit conducted by the department. The appellant has accepted the demand with regard to non-payment of service tax under various categories of services. One of the issue was whether the amount that has to be paid under works contract services was to be treated as original works or maintenance work. Other issue was whether the tax has to be paid under manpower supply services or works contract service. It is seen that there are interpretational issues. There is no iota of evidence adduced by the department that the appellant has committed any positive act of suppression of facts with intention to evade payment of service tax. Further, the appellant is an undertaking under the State Government of Tamil Nadu and for

these reasons I hold that it is a fit case to set aside the penalties imposed under sec. 78 of the Finance Act, 1994.

6. The appellant has relied upon the following case laws:-

- a. *Continental Foundation Joint Venture Vs. CCE reported in 2007 (216) ELT 177 (SC)*
- b. *Gita Enterprises Vs. Commissioner of Customs and Central Excise reported in 2017-TIOL-761-CESTAT-HYD*
- c. *Kerala Co-operative Deposit Guarantee Fund Board Vs. CCE reported in 2020 (2) TMI 569 – CESTAT Bangalore*

7. From the foregoing, I am of the view that all the penalties imposed under section 78 requires to be set aside which I hereby do. The impugned order is modified to the extent of setting aside the penalties imposed under sec. 78 of the Finance Act only without the disturbing the confirmation of demand or the interest thereon. Ordered accordingly. The appeal is allowed with consequential relief if any.

(Dictated in open court)

(SULEKHA BEEVI C.S.)
Member (Judicial)