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

REGIONAL BENCH- COURT NO. 3

Service Tax Appeal No. 10031 of 2015- DB

(Arising out of OIA-VAD-EXCUS-001-APP-431-14-15 dated 16.09.2014 passed by Commissioner (Appeals), Central Excise, Custom and Service Tax, Vadodara)

M/s Anand Muncipality **........Appellant**
Municpal Office, Mahatma Gandhi Road,
Anand, Gujarat

VERSUS

C.C.E. & S.T. Vadodara-i **......Respondent**
1sr Floor, Central Excise Building,
Race Course Circle, Vadodara, Gujarat-390007

APPEARANCE:
Shri Chetan Shah & Hitesh Shah, Chartered Accountant for the Appellant
Shri A.K. Mudvel, Superintendent (Authorised Representative) for the Respondent

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

FINAL ORDER NO._____10974 /2024

DATE OF HEARING: 09.04.2024
DATE OF DECISION: 01.05.2024

RAMESH NAIR

The brief facts of the case are that the appellant is Anand Muncipality, they have rented out their shops and the demand of service tax was proposed on renting of immovable property service. After issuance of show cause notice, the appellant have paid service tax with interest, hence they are seeking the only relief is setting aside the penalties imposed under Section 76, 77 and 78.

2. Shri Chetan Shah, learned Chartered Accountant with Shri Hitesh Shah, Chartered Accountant appearing on behalf of the appellant, submits that the appellant had a bonafide belief that they being a Government body as Anand Muncipality they are not liable to pay service tax on renting of shops. Moreover, the appellant have not

collected the service tax even after discharging their service tax liability from their tenant therefore, the penalty is liable to be set aside invoking section 80 of the Finance Act, 1994. He submits that in the case of identically placed Bharuch Muncipality vs CESTAT Vadodara-II Order No. A/11469/2014 dated 18.07.2014, this Tribunal has set aside the penalty invoking Section 80.

3. Shri A.K. Mudvel, learned Superintendent (Authorised Representative) appearing on behalf of the Revenue reiterates the findings of the impugned order.

4. We have carefully considered the submission made by both the sides and perused the records. We find that in the present case, the appellant are not contesting the merit of the case as well as the service tax demand and interest thereon which have already been paid by the appellant. The only relief sought by the appellant is waiver of penalties imposed under the Finance Act, 1994. We find that the appellant is a Government body i.e. Anand Muncipality and they have discharged the service tax along with interest before issuance of the adjudication order. Being a Government body there cannot be any intention to evade the payment of service tax, therefore, the bonafide belief of the appellant cannot be doubted with. We also find that in case of identically placed assessee i.e. Bharuch Muncipality (supra) this Tribunal vide order dated 18.07.2014 set aside, the penalty by invoking section 80. The said order is reproduced below:

> "When this stay petition was called out, after hearing both sides for some time on the stay petition, I find the appeal itself could be disposed of at this juncture as it lies in a very narrow compass. Accordingly, after allowing application for walver of pre-deposit of the amounts involved, I take the appeal for disposal.
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> 2. Heard both sides and perused the case records.
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> 3. The issue involved in this case is regarding the service tax liability on the amounts received by the appellant towards hiring of space for advertisement. The appellant is a local municipality and on being

> pointed out has paid service tax liability. It is the claim of the Chartered Accountant that the Municipality has not collected the service tax amount from their service recipients.
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> 4. On perusal of the appeal, it is noticed that the appellant is not contesting the issue of service tax liability and the interest thereof. In my considered view, the appellant being a local municipal body, and have not collected the service tax from the service recipients, could have entertained a bonafide belief that they need not to pay any service tax on the ground that they are government organization. This bonafide belief cannot be rejected outright.
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> 5. In view of this, by invoking provisions of Sec. 80 of the Finance Act, 1994, I set aside the penalties imposed by the lower authorities and allow the appeal.
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> 6. Appeal allowed as indicated herein above."

From the above decision, it can be seen that the present appellant and the appellant in the above case are identically placed being a municipal body, therefore, following the above order in the present case also the penalties are not sustainable. Moreover penalties were imposed under section 76 and 78 simultaneously. As of now, it is settled law in various judgments including, the judgments of Hon,ble Gujarat High Court in the case of **Raval Trading Company, 2016 (42) STR 210 (Guj.)** and **Modern Business Solutions 2019 (24) GSTL 353 (Tri. Amd.)**, that the simultaneous penalties under section 76 and 78 cannot be imposed. In view of the Hon'ble High Court decision, the penalty under Section 76 is not sustainable also on this ground. Accordingly, we set aside all the penalties imposed on the appellant. However, the service tax demand along with interest and payment thereof made by the appellant are maintained. The appeal is allowed in above terms.

(Order pronounced in the open court on 01.05.2024)

(RAMESH NAIR)
MEMBER (JUDICIAL)

(RAJU)
MEMBER (TECHNICAL)

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