

Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad
REGIONAL BENCH- COURT NO.3

Service Tax Appeal No.86 of 2010

(Arising out of OIA-RKA/766/SRT-I/2009 dated 27/10/2009 passed by Commissioner of Central Excise, CUSTOMS (Adjudication)-SURAT-I)

Dhru Cars Private Limited

C/O. Hemant Dhru & Suraksha Dhru,
31-32, Sneh Smruti Society, Opp. Adajan Bust Depot,
Surat, Gujarat

.....Appellant

VERSUS

C.C.E. & S.T.-Surat-I

New Building...Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat – 395001

.....Respondent

APPEARANCE:

None appeared for the Appellant

Shri Dharmendra Kanjani, Superintendent(AR) for the Respondent

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

Final Order No. A/ 11075 /2022

DATE OF HEARING: 18.08.2022

DATE OF DECISION: 18.08.2022

RAMESH NAIR

When the matter was called out none appeared on behalf of the appellant nor any adjournment request was placed on record. Accordingly I proceed to dispose of appeal.

2. Shri Dharmendra Kanjani, Learned Superintendent (AR) appeared for the Revenue. He submits that the appellant has raised only two grounds as mentioned on page 7 of the appeal memo which is reproduced below:-

- *Rs. 2,59,625/- being service tax paid on services prior to 10.09.2004 in the routine course under mistaken understanding of law (as also noted by C (A) in his OIA's para no. 6)*

- *Penalty @ 25 % has also been upheld without considering the fact that majority of service tax was discharged by the appellant even before the commencement of the subject investigation and in addition, rest of service tax along with interest has also been discharged much before*

the issuance of subject SCN and hence it was a fit case for waiver of entire penalty by resorting to provisions of Sec. 80 of the Act

2.1 He submits that as regard the payment of service tax amounting to Rs 2,59,625/- this amount was paid 05.09.2004 which is not the part of the demand in the present proceeding therefore the same cannot be considered. As regard the relief sought for by the appellant for waiver of penalty under section 80 of the Finance Act, he submits that demand was raised out of investigation conducted by the department. Therefore, there is no any bona fide on the part of the appellant. Accordingly, the penalty invoking section 80 cannot be waived.

3. I have carefully considered the submission made by Learned AR and perused the records.. I find that as regard the relief sought for by the appellant in respect of the amount of Rs 2,59,625/- claimed to have been paid prior to 05.09.2004. The learned commissioner (Appeal) given finding as under:

"6. The amount of tax confirmed on account of "Advertising Agency Services" is Rs.1,54,575/-. Further tax involved in Business Auxiliary Services for which payment was received prior to 10.09.2004 is Rs. 1,69,693/-. Thus an amount of Rs.3,24,268/- (1,54,575/- + 1,69,693/-) needs to be reduced from tax liability. The appellant has claimed that tax amount of Rs.2,59,625/- was paid by them on services of prior to 10.09.2004 in the routine course under mistake and seeks the adjustment of same. These being proceedings arising from the Show Cause Notice, it cannot go beyond the notice. Only such issues can be examined which are within the domain of the notice. If there has been any wrong payment in the routine course the appellant has a remedy to claim refund in accordance with statutory provisions. The tax liability, under the notice, is re-determined Rs. 14,44,537/- (Rs.17,68,805/- minus as Rs.3,24,268/-)."

From the above finding it is clear that the amount of Rs. 2,59,625/- is not the part of the demand in the present case. The Learned Commissioner (appeals) also recorded that if the amount was paid in the due course the same can be claimed as refund by the appellant. Therefore I do not find anything wrong in the finding given in the para 6 of the impugned order as regard the service tax amount of Rs. 2,59,625/- therefore, on this ground no relief can be granted to the appellant .

3.1 As regard the Appellant seeking waiver of penalty imposed under section 78 by invoking section 80 of the Finance Act, 1994, I find that the Commissioner (Appeal) has already extended the benefit of reduced penalty of 25 % on the basis that the appellant had paid the service tax demand, interest and 25% Penalty . I find that the demand was raised out of investigation conducted by the department. The appellant have not come forward on their own to pay the amount. Therefore considering the entire fact of the case the appellant had not made out any fit case for waiver of penalty, imposed under section 78 invoking section 80 of the Finance Act, 1994. Therefore the reduced penalty of 25% held by the Commissioner (Appeals) is upheld.

4. Accordingly, the impugned order is upheld appeal is dismissed.

(Pronounced & Dictated in open court)

RAMESH NAIR
MEMBER (JUDICAL)