CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 23399 of 2014

(Arising out of Order-in-Original No.09/2014-15 dated 25.07.2014 passed by the Commissioner of Central Excise and Service Tax (Adjudication), Bangalore.)

M/s. ASM Technologies Limited
No.80/2, Lussane Court,
Richmond Road, Richmond Town,
Bangalore – 560 025.

Appellant(s)

VERSUS

The Commissioner of Central Excise and Service Tax (Adjudication)
C.R. Building, P. B. No.5400,
Queens Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Shri N. Anand, Advocate for the Appellant

Shri Rajashekar B.N.N, Superintendent, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21209 /2025

DATE OF HEARING: 30.04.2025
DATE OF DECISION: 30.04.2025

PER : R. BHAGYA DEVI

Briefly the facts are the appellant M/s. ASM Technologies Ltd. are providers of taxable services under the category of 'Manpower Recruitment or Supply Agency Service', 'Information Technology Software Service' and 'Commercial Training and Coaching Service'. During Audit, it was noticed that the appellant had not paid service tax for the period from December 2009 to

September 2010 and as and when it was pointed out by the department, appellant paid the service tax amount of Rs. 2,59,57,376/- along with the interest of Rs. 20,08,611/-. The Commissioner confirmed the above amount and appropriated the same and imposed penalties under Section 77 and 78 of the Finance Act, 1994. Aggrieved by this order, the appellant is in appeal before us only with regard to penalty imposed under Section 78 of the Finance Act, 1994.

2. The Learned Counsel for the appellant submitted that appellant could not pay service tax duty due to financial crisis and thereafter, voluntarily paid service tax liability along with the interest. It is submitted that since the entire liability is paid much before the issuance of the show cause notice, the question of imposing penalty under Section 78 does not arise. Reliance was placed on the following decisions:-

a) **CCE v. Geneva Fine Punch Enclosures Ltd.: 2011 (267) ELT 481 (Kar.)**
b) **CST v. Lawson Travel & Tours (1) Pvt Ltd.: 2015 (38) STR 227 (Mad.)** affirming the decision of this Hon'ble Tribunal in **2008 (12) STR 572 (Tri-Che.)**
c) **Charu Papers Ltd v. CCE: 2010 (18) STR 575 (Tri-Del.)**
d) **Tulip Star v. CST, 2017 (48) STR 133 (Tri-Mum.)**
e) **CST v. Shlok Media Pvt Ltd, 2016 (45) STR 128 (Tri-Mum.)**
f) **M/s. Radiant Infosystems Ltd v. CCT, Bangalore: Final Order No.20875/2014 dated 30.04.2025**

3. The Authorized Representative (AR) reiterated the findings of the Commissioner in the impugned order.

4. Heard both sides. The issue is no longer *res integra* as the Hon'ble High Court of Karnataka in the case of **CCE & ST, LTU, Bangalore Vs. M/s. Adecco Flexione Workforce Solutions Ltd.: 2012 (26) STR 3 (KAR)** has observed as follows:-

> "**2.** Facts are not in dispute. The assessee has paid both the service tax and interest for delayed payments before issue of show cause notice under the Act. Sub-sec. (3) of Section 73 of the Finance Act, 1994 categorically states, after the payment of

service tax and interest is made and the said information is furnished to the authorities, then the authorities shall not serve any notice under sub-sec. (1) in respect of the amount so paid. Therefore, authorities have no authority to initiate proceedings for recovery of penalty under Sec. 76 of the Act.

3. Unfortunately the assessing authority as well as the appellate authority seem to think. If an assessee does not pay the tax within the stipulated time and regularly pays tax after the due date with interest. It is something which is not pardonable in law. Though the law does not say so, authorities working under the law seem to think otherwise and thus they are wasting that valuable time in proceeding against persons who are paying service tax with interest promptly. They are paid salary to act in accordance with law and to initiate proceedings against defaulters who have not paid service tax and interest in spite of service of notice calling upon them to make payment and certainly not to harass and initiate proceedings against persons who are paying tax with interest for delayed payment. It is high time, the authorities will change their attitude towards these tax payers, understanding the object with which this enactment is passed and also keep in mind the express provision as contained in sub-sec. (3) of Sec. 73. The Parliament has expressly stated that against persons who have paid tax with interest, no notice shall be served. If notices are issued contrary to the said Section, the person to be punished is the person who has issued notice and not the person to whom it is issued. We take that, in ignorance of law, the authorities are indulging in the extravaganza and wasting their precious time and also the time of the Tribunal and this Court. It is high time that the authorities shall issue appropriate directions to see that such tax payers are not harassed. If such instances are noticed by this Court hereafter, certainly it will be a case for taking proper action against those law breakers".

6. In view of the above, since the payment of service tax along with interest was paid and appropriated prior to the issuance of show-cause notice, which is not in dispute, therefore, imposition of penalties under Section 77 and 78 cannot be sustained.

7. In view of the above, the impugned order is modified only to the extent of setting aside penalties imposed under Section 77 and 78 of the Finance Act, 1994. Appeal is allowed.

(Operative portion of the order was pronounced in Open Court on conclusion of hearing.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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