CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/26447/2013-SM

[Arising out of Order-in-Appeal No. 39/2013/MY dated 11/02/2013 passed by Commissioner of Central Excise(Appeals) , MANGALORE]

Bannari Amman Sugars Ltd
Alaganchi Village, Nanjangud Taluk
MYSORE -
KARNATAKA

Appellant(s)

Versus

Commissioner of Central Excise,
Customs and Service Tax MYSORE
NULL S1-S2...VINAYA MARGA,
SIDDHARTHA NAGAR,
MYSORE - 570011
KARNATAKA

Respondent(s)

Appearance:

Shri Manoj Niranjan G., Advocate
CHAKRAVARTHY ASSOCIATES
NO.13, SECOND MAIN ROAD, CIT COLONY
CHENNAI.600004
CHENNAI - 600004
TN

For the Appellant

Shri N. Jagadish, Superintendent(AR)

For the Respondent

Date of Hearing: 29/12/2017
Date of Decision: 29/12/2017

CORAM:
HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

Final Order No. 23320 / 2017

Per : S.S GARG

This appeal is directed against the impugned order passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly the facts of the present case are that the appellants are holders of service tax registration for payment of service tax under the category of ‘Transport of Goods by Road’ and ‘Technical Inspection and Certification’ services. The intelligence gathered by the department revealed that the appellant had received the ‘Erection, Commissioning or Installation’ service from the foreign service provider and have paid the consideration for receipt of the said services but have not discharged the service tax liability under the provisions of Section 66A of the Finance Act, 1994 read with Rule 2(l)(d)(iv) of Service Tax Rules, 1994. Therefore, a show-cause notice dt. 10/08/2011 was issued demanding service tax amount of Rs.5,91,211/- along with interest and with a proposal to impose penalty. The adjudicating authority confirmed the demand of service tax amount stated in the show-cause notice along with interest and imposed penalties under Sections 70, 77(1)(a) and 78 of the Finance Act, 1994. Aggrieved by the said order, the appellant filed appeal before the Commissioner(Appeals) who also rejected the appeal of the appellant. Hence the present appeal.

3. Heard both sides and perused records.

4. The learned counsel for the assessee submitted that the impugned order is not sustainable in law as the same has been passed without appreciating and examining all the facts. He further submitted that imposition of penalty under Section 78 of the Finance Act is in contravention of the provisions of Section 73(3) of the Finance Act. He

further submitted that the service tax along with interest has already been paid by the assessee before the issuance of the show-cause notice. He also submitted that Section 73(3) of the Finance Act is in unambiguous terms provides that when the assessee has paid the service tax either on his own or on the basis of the officers ascertainment and informs the officer of such payment, then the said section does not give any power to such officer to issue a show-cause notice in respect of the tax so paid and such issuance of show-cause notice is without the authority of law and accordingly not sustainable and tenable. Further he submitted that the show-cause notice for imposing penalty was issued after more than one year from the date of payment of tax along with interest. In support of his submissions, learned counsel for the respondent has relied upon the following decisions:-

i. Bhoruka Aluminium Ltd. Vs. CCE [2017(51) STR 418]
ii. Punj Lloyd Ltd. Vs. CCE [2015(40) STR 1028 (Tri. Del.)]
iii. Indusland Media & Communication Ltd. Vs. CST [2017(5) GSTL 268]
iv. ARCGATE Vs. CCE [2017(5) GSTL 281 (Tri. Del.)]
v. CCE Vs. Galaxy Construction Pvt. Ltd. [2017(48) STR 37 (Bom.)]
vi. CST Vs. C Ahead Info Technologies India Pvt. Ltd. [2017(47) STR 125 (Kar.)]
vii. CCE Vs. Apollo Power Systems (P) Ltd. [2017(347) ELT 71 (Kar.)]
viii. CCE Vs. Geneva Fine Punch Enclosures Ltd. [2011(267) ELT 481 (Kar.)]
ix. Manipal County Vs. CST [2010(17) STR 474 and which has been upheld by Hon’ble High Court of Karnataka reported in 2014(36) STR J188
x. Landis + GYR Ltd. Vs. CCE [2017(49) STR 637]
xi. CCE&ST, LTU, Bangalore Vs. Adecco Flexione Workforce Solutions Ltd. [2012(26) STR 3 (Kar.)]

5. Learned AR for the Revenue defended the impugned order and submitted that the respondent is guilty of suppression of facts which were

detected during the audit and if the audit had not taken place, suppression would have gone unnoticed. The learned AR relied upon the decisions in the following cases:

i. Sunil Hi-Tech Engineers Ltd. Vs. CCE, Nagpur [2014(36) STR 408 (Tri. Mum.)]
ii. Raffles Software Pvt. Ltd. Vs. CCE,C&ST, Bangalore [Final Order No.22199/2017 dt. 21/09/2017]
iii. Srishti Software Applications (P) Ltd. +1 Vs. CCE,C&ST [Final order No.22201-22202/2017 dt. 22/09/2017]

6. After considering the submissions of both the sides and perusal of material on record and the various judgments relied upon by the respondent, I am of the considered view that Section 73(3) is very clear as it says that if the tax is paid along with interest before the issuance of the show-cause notice, then in that case, show-cause notice need not be issued. In the present case, I find that is on account of bona fide mistake that the service tax was not paid and as soon as it was pointed out by the audit party, the assessee paid the service tax along with interest. Further I find that there was no material brought on record by the Revenue to establish that there was suppression on the part of the assessee. Further on identical facts, this Tribunal in the case of Bhoruka Aluminium Ltd. cited supra has held that when the service tax along with interest is paid before the issuance of show-cause notice, then penalty under Sections 77 & 78 cannot be imposed.

7. I also find that the decisions relied upon by the learned AR are not applicable in the facts and circumstances of the present case.

Moreover, the decision in the case of Sunil Hi-Tech Engineers Ltd. has been distinguished by the Division Bench of this Tribunal in the case of Punj Lloyd Ltd. Further I find that in the case of Geneva Fine Punch Enclosures Ltd., the Hon'ble high Court of Karnataka has held that if the duty is paid along with interest before the issuance of the show-cause notice, then the penalty cannot be imposed. After considering the submissions of both the parties, I am of the considered view that the issue is squarely covered in favour of the assessee by various decisions cited supra and the impugned order is not sustainable in law. Accordingly, the impugned order is set aside and appeal is allowed with consequential relief if any.

(Operative portion of the Order was pronounced
in Open Court on **29/12/2017**)

S.S GARG
JUDICIAL MEMBER

Raja...