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

Application(s) Involved:

ST/CROSS/20958/2017 in ST/21501/2017-SM

Appeal(s) Involved:

ST/21501/2017-SM

[Arising out of Order-in-Appeal No. 666-2017 dated 13/06/2017 passed by Commissioner of Service Tax , BANGALORE-I(Appeal)]

Commissioner Of Central Tax, Gst East Appellant(s)

Versus

Mphasis Ltd
Bagmane World Technology Centre Marathalli
Ring Road Doddenakundi Village K R Puram
Hobli Mahadevapura
BANGALORE - 560048
KARNATAKA
Respondent(s)

Appearance:

Shri Madhusharan, Asst. Commissioner(AR) For the Appellant
Shri K. Parameshwaran, Advocate For the Respondent

Date of Hearing: 28/12/2017
Date of Decision: 28/12/2017

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

Final Order No. 23316 / 2017

Per : S.S GARG

The Revenue has filed the present appeal against the impugned order dt. 13/06/2017 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has dropped the penalties under Section 77 & 78.

2. Briefly the facts of the present case are that the respondents are registered with the Department under the category of Information Technology Software Service and Information Technology Enabled Services. A show-cause notice was issued to the respondent for various demands. After following the due process, the original authority confirmed the demands of Rs.20,24,289/- being service tax not paid on remuneration / commission paid to their Non-Executive Directors during the period from 2013-14 to 2014-15. Original authority also demanded interest on the delayed payment in terms of Section 75 of the Finance Act, 1994 and also imposed penalty under Section 77 and 78 of the Finance Act, 1994. Aggrieved by the said order, the respondent filed appeal before the Commissioner(Appeals) who accepted the appeal of the assessee and dropped the penalty under Sections 77 and 78. Aggrieved by the said order, the Revenue has filed the present appeal. On the other hand, the respondent has also filed Cross-objections.

3. Heard both the parties and perused records.

4. Learned AR for the Revenue submitted that the impugned order dropping the penalty under Section 78 is not sustainable in law. He further 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]

5. On the other hand, the learned counsel for the assessee defended the impugned order and submitted that the learned Commissioner(Appeals) after examining all the facts have dropped the penalty which is justified because there was no suppression of facts on the part of the respondent. 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, 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. 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]

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 part, 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. cite 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 I do not find any infirmity in the impugned order. Accordingly, the Revenue's appeal is without any merit and the same is dismissed. Cross-objections are accordingly disposed of.

(Operative portion of the Order was pronounced
in Open Court on **28/12/2017**)

S.S GARG
JUDICIAL MEMBER

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