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

Appeal(s) Involved:

ST/800/2009-SM

[Arising out of Order-in-Appeal No. 285/2009 dated 03/07/2009 passed by CCE(Appeals), Mangalore]

MOHD AMEEN .
M/S , ACC, LITD. NEAR BHAVANI TEMPLE,
WADI, (GULBARGA)

Appellant(s)

Versus

Commissioner of Central Excise,
Customs and Service Tax
BELGAUM
NULL NO. 71...CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM, - 590001
KARNATAKA

Respondent(s)

Appearance:

Shri G.H. Pradhyumna, Advocate — For the Appellant
Smt. Kavitha Podwal, Superintendent(AR) — For the Respondent

Date of Hearing: 20/02/2018
Date of Decision: 20/02/2018

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

Final Order No. 20287 / 2018

Per : S.S GARG

The present appeal is directed against the impugned order dt. 03/07/2009 passed by the Commissioner(Appeals).

2. Briefly the facts of the present case are that the appellant is a holder of Service Tax registration and has provided services of

'Maintenance or Repair', 'industrial construction, clearing, manpower supply and erection and commissioning to M/s. ACC Ltd. during the period from 01/07/2003 to 30/09/2006. Based on the intelligence that the appellant had not paid applicable service tax on the consideration received by him, proceedings were initiated against him. Thereafter a show-cause notice dt. 08/06/2007 was issued demanding service tax along with interest and penalties. The Additional Commissioner vide Order-in-Original dt. 18/07/2008 confirmed the demand of service tax amounting to Rs.4,29,909/- under various categories of service along with interest and penalties under Sections 76, 77 & 78. Aggrieved by the said order appellant filed appeal before the Commissioner(Appeals) and the Commissioner(Appeals) vide the impugned order has set aside the service tax on the taxable value of Rs.12,89,911/- under the category of 'Management, Maintenance or Repair Services', demand of service tax on the value of Rs.78,286/- under the 'Construction Services' and demand of service tax on the value of Rs.77,466/- but has upheld the rest of the demand. Penalty imposed under Section 76 of the Act was set aside invoking the provisions of Section 80 while penalties imposed under Sections 77 and 78 have been upheld. Hence the present appeal.

3. Heard both sides and perused records.

4. The learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly considering the provisions of law. He further submitted

that as per the impugned order, the service tax payable roughly works to Rs.2,69,885/- as against Rs.4,29,909/- as determined by the original authority. He further submitted that he has already paid service tax more than what was due. He also submitted that penalties under Sections 77 and 78 etc. are not sustainable as there was a reasonable cause for the failure to pay service tax because the appellant was small contractor and was new to the Service Tax procedure and was not aware of his liability and therefore he has pleaded that he should be given benefit of Section 80 of the Finance Act. He further submitted that the appellant neither charged nor collected service tax from the customer. He also submitted that the Commissioner(Appeals) has already set aside the penalty under Section 76 by invoking provisions of Section 80 of the Act which means that the existence of reasonable cause has been accepted and once the reasonable cause was accepted, the benefit under Section 80 should have been extended under the provisions of Section 77 and 78 also. In support of his submission, he relied upon the decision of the Hon'ble Karnataka High Court in the case of CST, Bangalore Vs. Motor World [2012(27) STR 225 (Kar.)] wherein it has been held that even though penalty under Section 78 of the Act is imposable on a person who has suppressed taxable value from the department, imposition of penalty under the said provision is not automatic but subject to Section 80 of the Act.

5. On the other hand, the learned AR reiterated the findings of the impugned order.

6. After considering the submissions of both sides and perusal of records, I find that the appellant is a small contractor who was new to the service tax and was not aware of the Service Tax procedure. Further I find that he has not charged nor collected the service tax from his customer and has paid the service tax more than what was due from him under the provisions of the Act. Further I find that once the Commissioner has dropped the penalty under Section 76 by invoking provisions of Section 80 then the penalties under Sections 77 and 78 can also be dropped by invoking Section 80 of the Act because there was a reasonable cause for the failure to pay the service tax. The decision of the Hon'ble High Court of Karnataka in the case of Motor World is squarely applicable in the present case and therefore by following the ratio of the said decision, I am of the view that the penalties are liable to be dropped and therefore I drop the penalties by allowing the appeal of the appellant to that extent.

(Operative part of this order was pronounced in court
On conclusion of the hearing)

S.S GARG
JUDICIAL MEMBER

Raja...