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

Appeals (s) Involved:

ST/2668/2011

(Arising out of: Order-in-Appeal No.61/2011 dated 14.6.2011 passed by the Commissioner of Central Excise (Appeals), Mangalore.)

M/s. Tiger Service Bureau
1st Floor, Hill Side Home
7th Block, Krishnapura, Suratkal
Mangalore – 574 158.

Appellant(s)

Versus

The Commissioner of Central Excise (Appeals)
V Floor, Trade Centre, Bunts Hostel Road
Mangalore – 575 003.

Respondent(s)

Appearance:

Mr. M. S. Nagaraja, Advocate
M/s. T.RAJESWARA SASTRY & ASSOCIATES, NO.48, 11TH MAIN ROAD, BANASHANKARI II STAGE, BANGALORE 560070

For the Appellant

Mr. Mathrupsharan, AR

For the Respondent

Date of Hearing: 11.04.2018

Date of Decision: 16.04.2018

CORAM:

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

FINAL Order No. 20577 / 2018

Per : S.S. GARG

The present appeal is directed against the impugned order dated 14.6.2011 passed by the Commissioner (A) whereby the Commissioner (A) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are a registered service provider under the category of "Security Agency Service". During course of the Audit of their records, by the Departmental Internal Audit Party, it was observed that the appellant had failed to pay the service tax for the period from 2008-09 to June 2009. On pointing out, the appellant paid the service tax, but failed to pay the interest for the delayed payment. Department issued a show-cause notice demanding of interest for delayed payment and also imposition of penalty under the provisions of the Finance Act, 1994. The adjudicating authority confirmed and appropriated the interest which was paid after the issuance of SCN and also imposed penalty under the provisions of Section 76 and Section 77 of the Finance Act, 1994. Aggrieved by the Order-in-Original, appellant filed appeal before the Commissioner (A) for waiver of penalties imposed under Section 76 and 77 of the Finance Act, 1994 on the ground that the appellant had severe financial problem and on account of that, they could not discharge the service tax obligation even though they had collected the service tax from the service receiver. But, the Commissioner (A) has rejected the appeal of the appellant. Hence, the present appeal.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same is passed without appreciating the facts and law. He further submitted that it is not disputed that the appellant had collected the service tax but failed to pay the same on account of severe financial crunch. He further submitted that the Proprietor also died during the pendency of the proceedings and the business was being run by the widow. He further submitted that there were justified reasons for not paying service tax due to the prolonged illness and untimely death of the Proprietor causing financial constraint but the service tax was deposited before the issue of show-cause notice and the interest was deposited before adjudication and the same was appropriated. He further submitted that appellant be given the waiver of penalties in terms of Section 80 of the Finance Act. In support of his submission, he relied upon the following decisions:

- *CST vs. Lawson Travel & Tours (I) Pvt. Ltd.: 2015 (38) STR 227 (Mad.)*
- *CCE vs. Tiger Service Bureau: 2011 (21) STR 364 (Kar.)*
- *Tulip Star vs. CST: 2017 (48) STR 133 (Tri.-Mum.)*
- *Mount Housing & Infrastructure Ltd. vs. CCE: 2014 (35) STR 389 (Tri.-Chennai)*

5. On the other hand, the learned AR defended the impugned order and submitted that in the present case the service tax was collected from the customer but the same was not deposited in the Government Treasury for fairly a long period of time i.e. from 2008-09 to June 2009. He further submitted that the appellant is not entitled to the benefit of Section 80 because he has not paid the tax after being collected from the customers, which shows that there was suppression on the part of the appellant to evade the payment of duty. In support of his submission, he relied upon the following decisions:

- *CST vs. Virtual Marketing (I) Pvt. Ltd.: 2017 (49) STR 577 (Tri.-Mumbai)*
- *Ketan Engineering Services Pvt. Ltd. vs. CST: 2014 (36) STR 196 (Tri.-Ahmd.)*
- *Ronak Shipping vs. UOI: 2016 (41) STR 420 (Guj.)*
- *Bajrang Security Services vs. CST: 2010 (19) STR 577 (Tri.-Ahmd.)*
- *Triton Communication Pvt. Ltd. vs. CCE: 2007 (6) STR 58 (Tri.-Mum.)*
- *Sai Machine Tools Pvt. Ltd. vs. CCE, Indore: 2006 (203) ELT 15 (MP)*
- *Final Order No.21291 – 21293/2017 dated 25.7.2017 in the case of Rovian Tourists Promotions & Other vs. CCE, Mangalore.*
- *CST vs. Motor World: 2012 (27) STR 225 (Kar.)*
- *Sanjogita Construction vs. CCE: 2012 (26) STR 112 (Tri.-Mumbai)*
- *IVI Crogenic Vaporisation System India vs. CCE:2016 (41) STR 290 (Tri.-Ahmd.)*
- *United Udyog vs. CCE: 2015 (39) STR 148 (Tri.-Kol.)*

6. After considering the submissions of both the parties and perusal of the material on record and the various decisions relied upon by both the parties, I find that, in the present case, the assessee has collected the service tax but has not deposited the same in the Government Treasury for fairly a long period of time and on being pointed out by the Department, the appellant discharged the service tax and interest was paid after the issue of show-cause notice but before adjudication. The ground raised by the appellant that they had financial difficulties, on account of which the appellant could not pay the service tax, is not a valid ground as they have collected the service tax from their customers. Further, I find that the Tribunal in the case of *Triton Communication Pvt. Ltd. reported in 2007 (6) STR 58* has held that financial crisis is not a reasonable cause for failure to pay tax. Further, the Tribunal in the case of *Rovion Tourists Promotions* vide Final Order No. 21291 - 21293/2017 dated 25.7.2017 has held as under:

> *"5. On a careful consideration of the submissions made, I find from the records that the appellant had failed to declare the correct taxability in the ST-3 return, suppressed the value of taxable services and also did not deposit tax collected from their customers into Government Treasury. In the case in hand, if the Department had not conducted the detailed investigation, the entire non-payment of tax would have gone unnoticed and escaped detection. Since*

appellant has collected the service tax but not deposited to the Government, I find that the penalty imposed by the adjudicating authority and upheld by the First Appellate Authority are correct and there is no reason to interfere in such a reasoned order passed by the lower authority."

7. Therefore, by following the ratio of the above said decisions, I do not find any infirmity in the impugned order, which is upheld by dismissing the appeal of the appellant.

(Order was pronounced in open court on **16.04.2017.)**

S.S. GARG
JUDICIAL MEMBER

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