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

Appeal(s) Involved:

ST/142/2008-DB

[Arising out of Order-in-Original No. 104/2007-Commr. LTU dated 27/12/2007 passed by the Commissioner of Large Tax Payers' Unit Commissionerate, Bangalore.]

M/s. ADECCO FLEXI ONE WORK FORCE SOLUTIONS LIMITED
REGENT COURT, 1ST AND 2ND FLOOR, PLOT NO.17, 80 FT ROAD,KORMANGALA, BANGALORE

Appellant(s)

Versus

Commissioner of Central Excise, Customs and Service Tax BANGALORE-LTU
100 FT RING ROAD JSS TOWERS, BANASHANKARI-III STAGE, BANGALORE, - 560085 KARNATAKA

Respondent(s)

Appearance:

Mr. M. Karthikeyan, Advocate
Swami Associates & Co.
G-8, FORTUNA ICON APARTMENTS, JODIDHAR ASWATHAPPA FARM, BEHIND NAGARJUNA NAGAR, SAHKAR NAGAR, BANGALORE, - 560092 KARNATAKA

For the Appellant

Mr. Parashiamurthy, AR — For the Respondent

Date of Hearing: 16/04/2018
Date of Decision: 16/04/2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. DEVENDER SINGH, TECHNICAL MEMBER

Final Order No. 20586 / 2018

Per : DEVENDER SINGH

The appellant is registered with the Department in the category of "Manpower Recruitment or Supply Agency service". On scrutiny of their records, the Department found that during the period October 2002 to November 2005, the appellant had delayed crediting of service tax to the Government Account. Accordingly, a show-cause notice dated 28.9.2007 was issued to them demanding interest on Service Tax of Rs.5,48,38,111/- during the above mentioned period. Since the appellant had already paid the demanded interest amount of Rs.18,10,433/- before the issuance of show-cause notice, its appropriation was also proposed in the show-cause notice. Penalty under Section 76 of the Finance Act, 1994 was also proposed.

2. In the adjudication proceedings, the adjudicating authority confirmed the demand of interest. It also imposed a penalty under Section 76 of the Finance Act, 1994. Aggrieved from the order of learned Commissioner pertaining to imposition of penalty, the appellant have filed this appeal.

3. Shri M. Karthikeyan, learned advocate appearing for the appellant submits that they had paid the full amount of duty including the Education Cess and the interest before issuance of

the show-cause notice. In such circumstances, where interest had been paid for the delayed payment before the issuance of show-cause notice, the show-cause notice was not required to be issued and penalty under Section 76 was not justified as has been held by the Hon'ble Karnataka High Court in their own case as reported in *2012 (26) STR 3 (Kar.)*.

4. Learned AR reiterated the findings in the order of the Commissioner.

5. Heard both the sides and perused the records.

6. The learned advocate submits that they are only contesting the penalty under Section 76 and are not contesting the interest which is already paid by them. Admittedly, the assessee had paid both the service tax and interest for its delayed payment before the issue of show-cause notice. In similar set of facts, in assessee's own case, the Hon'ble Karnataka High Court has held that the Authority / Department should not serve any show-cause notice and penalty under Section 76 of the Act, is not leviable. In this regard, the findings in the judgment of Hon'ble Karnataka High Court are reproduced below:

> *"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".*

6.1 By following the above judgment of Hon'ble Karnataka High Court, the order of Commissioner imposing penalty under Section 76 of Finance Act, 1994 is set aside and the appeal of the appellant is allowed.

(Operative portion of the Order was pronounced
in Open Court on **16/04/2018.**)

S.S GARG
JUDICIAL MEMBER

DEVENDER SINGH
TECHNICAL MEMBER

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