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

Appeal(s) Involved:

ST/58/2009-DB; ST/59/2009-DB; ST/60/2009-DB

[Arising out of:

(i) Order-in-Original No. 004/2009-Commr.LTU dated 13/01/2009;

(ii) Order-in-Original No.110/2008-Commr.LTU dated 8.12.2008; and

(iii) Order-in-Original No.133/2008-Commr. LTU dated 8.12.2008

All passed by the Commissioner of Central Excise and Service Tax, Large Tax Payer Unit, Bangalore.]

M/s. ADECCO FLEXIONE WORKFORCE SOLUTIONS LIMITED
REGENT COURT, 1ST & 2ND FLOOR,
PLOT NO.17, 80 FEET ROAD,
KORAMANGALA,
BANGALORE – 560 034.

Appellant(s)

Versus

The Commissioner of Central Excise and Service Tax
BANGALORE-LTU
100 FT RING ROAD JSS TOWERS,
BANASHANKARI-III STAGE,
BANGALORE - 560 085.
KARNATAKA

Respondent(s)

Appearance:

Mr. B. Venugopal, Advocate
SWAMY ASSOCIATES
G-8, FORTUNA ICON, APARTMENTS,JODIDAR
ASHWATHAPPA FARM, SAHAKARA NAGAR,
BANGALORE 560 092

For the Appellant

Mrs. Kavitha Podwal, AR For the Respondent

Date of Hearing: 25/07/2018
Date of Decision: 31/07/2018

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

FINAL ORDER No. 21066 – 21068 / 2018

ORDER PER: S.S GARG

The appellants have filed these three appeals against the impugned orders dated 13.1.2009 and 8.12.2008 whereby the Commissioner has imposed the penalty under Section 76 for the default in payment of service tax within the stipulated time i.e., by 5th of every month immediately following the calendar month in which the service is provided as per Rule 6(1) of Service Tax Rule, 1994 read with Section 68 of the Act. Since the issue involved in all the three appeals is identical; therefore, all the three appeals are being disposed of by this common order. The details of all the three appeals are given herein below:

Appeal Nos.	**E/58/2009**	**E/59/2009**	**E/60/2009**
Period of Dispute	October 2008	August 2008	September 2008
Date of Show-cause notice	14.11.2008	17.9.2008	21.10.2008
Period	17/11 to 05/12	25/9 to 30/10	15/10 to 14/11
Order-in-Original	004/2009-Commr.LTU dated 13/01/2009	No.110/2008-Commr.LTU dated 8.12.2008	No.133/2008-Commr. LTU dated 8.12.2008

2. For the sake of convenience, the facts of appeal No.E/58/2009 are taken. The appellants are engaged in providing taxable service under the category of ‘manpower recruitment or supply agency service’ as defined under Clause 68 of Section 65 of the Finance Act, 1994. On scrutiny of the records of the assessee, it was found that they have not discharged the service tax liability for the month of October 2008. Scrutiny of the records and bank statements, revealed that out of the total service tax liability of Rs.6,06,44,152/- (including Education Cess and Secondary Higher Education Cess) for the month of October 2008, the assessee has not paid any tax and thereby, contravened the provisions of Section 68 of the Finance Act, 1994. Perusal of the records shows that the assessee has been continuously defaulted in paying the service tax before the due date and on these allegations, a show-cause notice was issued, thereafter, the assessee made the payment of service tax due along with interest and after following the due process, the Commissioner confirmed the demand and appropriated the payment of service tax and interest but imposed penalty on the appellant under Section 76 of the Finance Act, 1994 for delay in payment of service tax. Aggrieved by the said order of penalty under Section 76, the appellant have filed these three appeals.

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 has been passed without appreciating the facts in the proper perspective. He further submitted that there was delay in the payment of service tax but the delay occurred on account of the fact that there was a delay in receiving the amount from the clients. He further submitted that the appellant was facing financial difficulties and has to pay the salaries to their employees first. He further submitted that there is no intention to evade as the appellant is a LTU unit and has been paying huge service tax to the Government and default happened only because of the financial difficulties and thereafter, on issue of show-cause notice, the appellant has paid the service tax along with interest and he is only praying that the penalties imposed under Section 76 may be dropped by invoking the provision of Section 80 of the Finance Act, 1994.

5. On the other hand, the learned AR defended the impugned order and submitted that the assessee is a habitual offender as observed by the Commissioner by giving instances of

delay in the past months also. He further submitted that in the present case, the appellants have collected the service tax but did not deposit the same in the Government treasury and therefore, when the appellant has collected the service tax and has retained the same with him then in that situation, he is liable to pay interest as well as penalty under Section 76. In support of his submission, the learned AR relied upon the following decisions:

- ***M/s. Tiger Service Bureau vs. CCE, Mangalore: 2018-TIOL-1776-CESTAT-BANG.***
- ***United Udyog vs. CCE: 2015 (39) STR 148 (Tri.-Kolkata)***
- ***INMA International Security Academy P. Ltd. vs. CCE: 2006 (1) STR 289 (Tri.-Chennai)***

6. After considering the submissions of both the parties and perusal of the record as well as the decisions relied upon by the learned AR, we find that in the present case the appellant has collected the service tax but has not deposited the same in the Government Treasury and when the show-cause notice was issued for the default, thereafter, the assessee paid the service tax along with interest. Further, we find that the only ground raised by the appellant for seeking waiver of penalty under Section 80 is that they had financial difficulties on account of which they could not pay the service tax in time but this is not a sufficient ground because they have collected the service tax

from their customers. Further, we find that the Tribunal in the case of ***Triton Communications Pvt. Ltd.*** reported in ***2007 (6) STR 58***, the Tribunal 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."*

6.1 Further, we find that in the past also, the appellant has committed default in payment of service tax in time. No doubt the appellant had some difficulties on the financial front but that cannot be the reason for non-payment of tax once they have collected from the customers.

7. In view of our discussions above, we do not find any infirmity in the impugned order, which is upheld by dismissing the appeals of the appellant.

(Order was pronounced in Open Court on **<u>31.07.2018</u>.)**

P. ANJANI KUMAR **TECHNICAL MEMBER**	**S.S GARG** **JUDICIAL MEMBER**

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