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

Appeal(s) Involved:

ST/2160/2012-SM, ST/2161/2012-SM

[Arising out of Order-in-Appeal No. 218/2012 dated 08/05/2012 passed by the Commissioner of Central Excise, Mangalore]

Gangadhara Gowda
Prop. Manju Cable Network
No.343, Old Post Office Road,
Hunsur Road,
Illawala Post
Mysore – 571 130

Appellant(s)

Versus

C.C.,C.E.& S.T-Mysore
S1-S2, Vinaya Marga,
Siddhartha Nagar,
Mysore – 570 011
Karnataka

Respondent(s)

Appearance:

Mr. B.C Bhat, Advocate
No. 81, 11th Main, Opp. KSFC
Kamakshi Hospital Road
Saraswathipuram
Mysore – 570 009
Karnataka

For the Appellant

Mr. N. Jagadish, Superintendent (AR)

For the Respondent

Date of Hearing: 07/05/2018
Date of Decision: 30/08/2018

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

Final Order Nos. 21234 - 21235/2018

Per: S.S GARG

The present appeals are directed against the common impugned order dated 01.05.2012 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has upheld the Order-in-Original with some modification. Since the impugned order is common and the issue is identical, therefore, both the appeals are being disposed of by this common order. The details of the two appeals are given herein below:

Appeal No.	**ST/2160/2012**	**ST/2161/2012**
Period of Dispute	October 2003 to December 2008	April 2009 to December 2009
Service Tax Demand		
Service Tax	Rs. 10,85,390/-	Rs. 4,70,954/-
Interest	Under Section 75 of Finance Act	Under Section 75 of Finance Act
Penalty u/s 76	Not imposed	Rs. 200/- per day subjected to maximum of tax amount
Penalty u/s 78	Rs. 10,85,390/-	Not imposed
Penalty u/s 77	Rs. 5,000/-	Rs. 5,000/- or Rs. 200/- per day whichever is higher
Service Tax paid		
Service Tax	Rs. 4,01,081/- (paid before SCN)	Rs. 3,73,909/- (paid)
Interest	Rs. 90,458/- (entire interest paid)	Rs. 85,595/- (paid)
Penalty u/s 76	Not imposed	Rs. 1,06,743/- (25% paid)
Penalty u/s 78	Rs. 1,00,270/- (25% paid)	Not imposed
Penalty u/s 77	Rs. 5,000/- (paid)	Rs. 5,000/- (paid)

Briefly the facts of the present case are that the appellant is engaged in providing Cable TV connection falling under the category of 'Cable Operator Service'. He is a Cable TV operator and receives signals from M/s. United Mysore Network Pvt. Ltd. (UMN), Mysore and

M/s. Hathway Mysore Cable Network Pvt. Ltd. (Hathway), Mysore and has given Cable TV connections to M/s. Infosys, Mysore. M/s. UMN and Hathway are paying service tax for their service regularly and charging the same to the appellant in their bills. The appellants are paying amount including service tax to his service providers. During the relevant period, the appellants have not paid the service tax under the impression that when the principal signal supplier is paying the service tax, then Cable TV operator need not pay service tax again on the said services. The Department issued two show-cause notices for the period October 2003 to December 2008 and from April 2009 to December 2009 demanding service tax for the impugned period along with interest and proposed penalty under the provisions of Finance Act 1994. Adjudicating authority after following the principles of natural justice confirmed the demand along with interest and imposed penalty under Section 76, 77 and 78 of the Finance Act. Aggrieved by the said order, appellant filed appeals before the Commissioner (Appeals) who modified the Order-in-Original.

2. Heard both the parties and perused the records.

3. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same is contrary to the facts and the law. He further submitted that the appellant was under the impression that when the main contractor has paid the service tax, then the sub-contractor need not have to pay the service tax and hence he has not paid the service tax. However as soon as it was noticed by the Department, thereafter he has paid the service tax along with interest

and 25% penalty on various dates and requested to allow cenvat credit. He further submitted that in para 8 of the Order-in-Appeal the Commissioner (Appeals) has observed that the appellants being service provider of taxable service are eligible to take cenvat credit in accordance with the Cenvat Credit Rules 2004 and utilize the same for discharging their service tax liability. In respect of this observation, the Commissioner (Appeals) has not given him the benefit of cenvat credit. He further submitted that once he has paid the service tax along with interest and 25% of the penalty, then he is not liable to pay the equal penalty imposed under Section 78 of the Finance Act as he was under a bona fide belief that when the signal provider has paid the service tax, then the cable operator need not pay the service tax on the said services. He further submitted that there was no suppression of fact nor there is any intention to evade the service tax. The appellant is an individual and a small petty businessman not well-versed with the provisions of Service Tax and the Rules. In support of this submission, he relied upon the decision in the case of ***Pushpan Travels Vs. Commr. of Service Tax, Ahmedabad reported in 2010 (19) S.T.R 98*** wherein the Tribunal has held that the service tax paid once liability pointed out then intention to evade is missing and the appellant being an individual and taking facts into consideration, the penalties were set aside. Further in the case of ***Hex Cargo Movers (P) Ltd. Vs. Commr. of C. Ex., Coimbatore reported in 2010 (17) STR 23,*** the Tribunal has held that for delay in payment of service tax, no penalty shall be imposed and proceedings are conclusive.

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

5. After considering the submissions of both the parties and perusal of the material on record, I find that the appellant as per the impugned order is entitled to cenvat credit for payment of service tax. Further I find that the appellant has paid the substantial amount before the issue of show-cause notice and some of the amount has been paid before the Final Order was passed along with interest and penalty, the details of which has been given by him in the grounds of appeal. Further I find that the appellant has stated that he has paid 25% of penalty on 29.03.2011. Further I find that appellant being a small businessman and is not having adequate knowledge of the Act and the Service Tax Rules and paid the entire amount along with interest and 25% of the penalty, therefore, he is entitled to the benefit of Section 80 of the Finance Act 1994 as there was a reasonable ground for failure to pay the duty in time. Therefore, I allow the appeals of the appellant and set aside the impugned order by giving the benefit of Section 80 of the Finance Act.

(Order Pronounced in Open Court on **30/08/2018**)

(S.S GARG)
JUDICIAL MEMBER

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