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

Appeal(s) Involved:

ST/66/2009-DB

[Arising out of OIA No. 336/2008 dated 26/12/2008 passed by CCE(Appeals-II), Bangalore]

J.B. RENT-A-CAR
NO.191, SHANKAR NAG ROAD, DOMLUR,
HALAIRPORT ROAD,BANGALORE

Appellant(s)

Versus

C.C.E & C.S.T.-BANGALORE
SERVICE TAX- I
1ST TO 5TH FLOOR,
TTMC BUILDING, above BMTC BUS STAND,DOMLUR
BANGALORE,
KARNATAKA
560071

Respondent(s)

Appearance:

Shri G.H. Pradyumna, Advocate — For the Appellant

Dr. J. Harish, Dy. Commissioner(AR) — For the Respondent

Date of Hearing: 29/08/2018
Date of Decision:___________

CORAM:

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

Final Order No. __________/ 2018

Per : S.S. GARG

The present appeal is directed against the impugned order dt. 26/12/2008 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are

registered under Service Tax in the category of 'Tour Operators service' under which the original authority has confirmed the demand of Rs.2,98,037/- towards service tax on tour operators service. The appellants had challenged the levy of service tax on tour operators service in the High Court of Karnataka in Writ Petition No.30609 of 2002, which held that the service rendered by the appellant is taxable and dismissed the Writ Petition vide order dt. 22/09/2006. Thereafter the Anti-Evasion Wing of Service Tax Commissionerate, Bangalore called the records/documents for quantification and demand of service tax on the taxable services provided by the appellant and also the appellant supplying vehicles on hire for tourist purposes since 2000-2001, but registered themselves on 01/08/2002 and the appellant started paying service tax from October 2003 onwards, on scrutiny of the balance sheet and profit and loss account for the year 2000-01 revealed that the appellant had earned income from the supply of vehicles for tourist purpose and the appellant has not paid the service tax on said taxable service for the period from April 2000 to October 2003 and short paid during November 2003 to March 2006. Further the appellant accepted the judgment of Hon'ble High Court order regarding the levy of service tax on the services rendered by them and no appeal is sought. After that, a show-cause notice was issued to the appellant and after following the due process, the Deputy Commissioner confirmed the demand of service tax of Rs.2,98,037/- along with interest and penalties under the provisions of Sections 76, 77 and 78. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who vide the impugned order dismissed the appeal.

3. Heard both sides and perused records.

4. 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 demand is barred by limitation since the appellant had charged nor collected the service tax and the issue was agitated before the Hon’ble High Court of Karnataka. He further submitted that the entire service tax has been paid and in addition to the service tax a further amount of Rs.75,000/- has also been deposited under Section 35F of Central Excise Act, 1944 which covers the interest liability and the only prayer made by the learned counsel for the appellant is for setting aside the penalties on the ground that there was no suppression of fact and the matter was pending in the High Court which was finally disposed of on 22/09/2006. He also submitted that in the earlier stages of levy of service tax on tour operators services, there was lot of confusion as is evidenced by the fact that a large number of writ petitions were filed before various High Courts challenging the levy itself and therefore it was an issue relating to interpretation regarding various aspects of tour operators services.

5. After considering submissions of both sides and perusal of records, we find that the appellant has not collected the service tax from the customers and more over the levy of service tax on tour operators

services was challenged before the High Court during the relevant time and it was finally decided on 22/09/2006 and therefore we find that the appellant had a bona fide belief and reasonable cause for non-payment of service tax but subsequently they have paid the service tax and also the interest. Therefore we are of the view that the appellant is entitled to waiver of penalty under Section 80 of the Finance Act. In view of the judgment of the Hon'ble High Court of Karnataka in the case of CST Vs. Motor World [2012(27) STR 225 (Kar.)] wherein it was held that penalty was not imposable under Section 80 of the Act even if the non-payment of service tax on account of suppression of facts and the tax itself is demanded for the extended period of limitation, we grant waiver of penalty by resorting to Section 80. Consequently the appeal is allowed to the extent of dropping the penalty.

(Order was pronounced
in Open Court on **......................**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Raja...