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

Appeal(s) Involved:

ST/727/2008-DB

[Arising out of OIO No. 40/2008 dated 24/09/2008 passed
by Commissioner of Service Tax , BANGALORE-I]

E Bhaskar
Prop.M/s Ravi Enterprises,mukund Building
1st Main Peenya Dasarahalli,bangalore
BANGALORE
KARNATAKA
560057

Appellant(s)

Versus

C.C.E.-Bangalore-i
POST BOX NO 5400...CR BUILDINGS,
BANGALORE,
KARNATAKA
560001

Respondent(s)

Appearance:

Shri B. Raghavendra, Advocate
G.SAMPATH & S. RAGHU
543,12TH CROSS,8TH MAIN J.P NAGARA
2ND PAHASE, BANGALORE 560078
BANGALORE
KARANATAKA
560078

For the Appellant

Dr. J. Harish, Dy. Commissioner(AR)

For the Respondent

Date of Hearing: 28/06/2018
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.

24/09/2008 passed by the Commissioner of Service Tax whereby the Commissioner has confirmed the demand and also appropriated the tax paid by the appellant and also imposed penalties under Section 76, 77 & 78.

2. Briefly the facts of the present case are that the appellant is rendering taxable services under the category of Manpower Recruitment and supply Agency services covered by Section 65(68) of the Finance Act, 1994. After gathering intelligence that the assessee is providing taxable service without taking registration under Section 69 of the Act and without charging / collecting / paying service tax. Preliminary verification was done and it was found that the appellant is rendering taxable service. Thereafter the appellant, during the investigation itself, paid the service tax after collecting the same from the service recipients. Thereafter a show-cause notice was issued to the appellant proposing to demand service tax along with interst and also proposed penalties under Sections 76, 77 and 78. After following the due process, the Commissioner confirmed the demand and also appropriated the amount of tax paid before the issuance of show-cause notice. Aggrieved by the same, appellant filed the present appeal.

3. Heard both sides and perused records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable as the same has been passed without properly

appreciating various legal submissions of the appellant. He further submitted that the appellant is a proprietary concern and is managed by a single person who does not know the provisions of service tax nor his client informed him about the applicability about the service tax to his service. He further submitted that appellant had a bona fide belief that he is not liable to pay service tax and that is why the appellant has not collected any service tax from the service recipient but when the Department has pointed out to him his liability to pay service tax, he paid the entire service tax which also proves that he has no intention to evade the payment of service tax. He has only prayed in the present appeal that since he has paid the entire service tax before the issuance of show-cause notice, the interest and various penalties imposed under Sections 76, 77 & 78 should be dropped. In support of his submission, the appellant relied upon the following decisions:-

i. CCE&C, Aurangabad Vs. Jaiswal Travels [2016(46) STR 180 (Tri. Mum.)]
ii. Krishna Murari Gupta Vs. CCE&ST, Jaipur-I [2016(44) STR 682 (Tri. Del.)]
iii. CST, Bangalore Vs. Motor World [2012(27) STR 225 (Kar.)]
iv. Infinity Credit Vs. CCE, Jaipur [2009(16) STR 61 (Tri. Del.)]
v. Gurwinder Kaur Vs. CCE, Ahmedabad [2011(24) STR 667 (Tri. Ahmd.)]
vi. A.S. Patel Vs. CST, Ahmedaad [2009(15) STR 36 (Tri. Ahmd.)]
vii. CCE, Kanpur Vs. Pradeep Enterprises [2009(16) STR 419 (Tri. Del.)]
viii. CCE, Kanpur Vs. J.R. Singh [2009 (16) STR 484 (Tri. Del.)]

5. On the other hand, the learned AR defended the impugned order and submitted that appellant has suppressed the material fact that he is rendering taxable service and did not pay the service tax and also did not get the registration which shows that he has suppressed the material facts with intent to evade the payment of service tax. He further submitted that ignorance of law is no excuse. He further submitted that the Commissioner has rightly imposed penalties under various provisions after holding that appellant has suppressed the material fact with intent to evade service tax.

6. After considering the submissions of both sides and perusal of the material on record, we find that the appellant is a proprietary concern and he is providing the taxable service under the category of Manpower Recruitment and Supply Agency service but he was under a bona fide belief that he was not liable to pay service tax and that is why he did not take registration under the service tax and did not collect the service tax from his clients and also did not pay the service tax to the Government. But when the Department conducted investigation, he became aware of his liability and thereafter he paid the entire service tax liability much before the issuance of the show-cause notice. Further we find that the Manpower Recruitment and Supply service became taxable w.e.f. 16/06/2005. We also find that appellant is an illiterate person and does not have the knowledge about the service tax provisions and that his activity is liable to service tax as the said service was newly brought under the Service Tax regime. Further, we find that various decisions relied upon by the appellant

cited supra, the Tribunal has taken a view that after there is an honest belief founded on reasonable grounds that the assessee is not liable to pay service tax but pay the service tax if the Department intervened and demanded service tax, then in those situations, the Tribunal should take liberal view and give him the benefit under Section 80 of the Finance Act, 1994 and should drop the penalties under Sections 76, 77 & 78. The Tribunal in the case of Infinity Credit cited supra, in identical circumstances, held that there are sufficient causes for the appellant in entertaining doubt that they were not liable to pay the service tax especially when the service tax was recently introduced and the Tribunal by invoking the provisions of Section 80 of the Finance Act, has set aside the various penalties imposed on the appellant. In the facts and circumstances of the present case also, we are of the considered view that since the appellant has paid the service tax before the issuance of the show-cause notice and he had no intention to evade the payment of service tax. Therefore under these circumstances, we, by invoking Section 80, set aside the penalties imposed under Sections 76, 77 and 78. As far as interest liability is concerned, since there is a delay in payment service tax by the assessee, consequently the assessee is liable to pay interest under Section 75 of the Finance Act and the computation of interest would be done by the adjudicating authority which the assessee will pay.

7. In the result, we set aside the penalties imposed on the

appellant and confirm the demand of interest under Section 75 of the Finance Act. Appeal is accordingly disposed of in these terms.

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

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Raja...