

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

ST/21921/2018-SM

[Arising out of Order-in-Appeal No. 70/2018-CT dated
31/08/2018 passed by Commissioner of Central Tax ,
BELGAUM (APPEALS)]

Jossy Edwin Pinto

Prop Star Homes Enterprises Behind Star
Plaza Main Road Kinnigoli
MANGALORE - 574150
KARNATAKA

Appellant(s)

VERSUS

**Commissioner Of Central Excise &
Central Tax, Mangalore
Commissionerate**

7th Floor, Trade Center, Bunts Hostel Road
Mangalore - 575003
Karnataka

Respondent(s)

Appearance:

Shri Cherian Punnoose, Advocate

A.K.B. ASSOCIATES

#311-312, 'COMMERCE HOUSE'
9/1, Cunningham Road,
BANGALORE - 560052
KARNATAKA

For the Appellant

For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20454 / 2019

Date of Hearing: 04/06/2019

Date of Decision: 04/06/2019

Per : S.S GARG

The present appeal is directed against the impugned order dt. 31/08/2018 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has partly allowed the appeal of the appellant.

2. Briefly the facts of the present case are that the assessee was engaged in the construction activity of residential buildings of more than 12 units from 2012 onwards but had not registered and had not paid any service tax. The work of construction was sub-contracted and the assessee had collected amounts from the prospective buyers. After allowing abatement of 75% as per Notification No.29/2010-ST dt. 22/06/2010 and threshold exemption, the amount of Rs.47,64,327/- was taxable income for the period 2011-12 to 2014-15. Further they had also provided service under renting of immovable property service during the period 01/07/2012 to 30/09/2014 and received consideration of Rs.7,00,903/-. Department issued a notice on 20/01/2016 demanding Rs.6,67,891/- along with interest and penalty. The assessee also claimed the credit of the service tax paid on input services. After considering the reply of the assessee, the adjudicating authority confirmed the entire demand made in the notice along with interest and penalty. The amount of Rs.7,75,945/- paid by the assessee was appropriated towards the demand and interest. Aggrieved by the Order-in-Original, appellant filed appeal before the Commissioner(Appeals) who modified the Order-in-Original.

3. Heard both sides and perused records.

4.1. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the appellants have paid the service tax of Rs.6,67,891/- along with interest before the issue of show-cause

notice. He further submitted that once they paid the service tax along with interest, they are entitled for the benefit under Section 73(3) of the Finance Act, 1994 and the proceedings should have been concluded and there was no need for issuing the show-cause notice. He further submitted that the appellant had a bona fide belief that they are not liable to pay service tax and therefore they did not get themselves registered under service tax nor paid the service tax during the relevant period; but once it was pointed out to them that they are liable to pay service tax, they immediately paid the same before the issuance of the show-cause notice which clearly shows that there was no suppression of facts with intent to evade the tax. He further submitted that this issue is no more res integra and has been settled by various decisions of the Tribunal and the High Court. In support of this submission, he relied upon the following decisions:-

- i. CCE&ST, LTU, Bangalore Vs. Adecco Flexione Workforce [2012(26) STR 6 (Kar.)]
- ii. CCE, Nagpur Vs. Galaxy Construction P. Ltd. [2017(48) STR 37 (Bom.)]
- iii. Krishna HT Vs. CCE, Mysuru [2018-TIOL-1819-CESTAT-BANG]
- iv. TV Ismail Haji & Co. Vs. CCE&ST [2017(5) TMI 766-CESTAT, Bangalore]

4.2. He further submitted that penalty of Rs.1,40,000/- under Rule 7c of the Service Tax Rules, 1994 read with Section 70 of the Act has wrongly been imposed as the said Rule is not applicable in the present case because penalty can be imposed under Section 7c for delayed filing of service tax returns but in the present case, the appellant has not filed the return at all as they were not registered under the Service Tax. Learned counsel did not contest the imposition of penalty of Rs. ` 10,000/- under Section 77(1)(a) of the Act for failure to register under the Service Tax within the stipulated time prescribed.

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both sides and perusal of material on record, I find that this issue is no more res integra and has been settled in favour of the appellant that once the appellant pays the tax along with interest before the issue of show-cause notice, then he is not liable to pay the penalty as held in the decisions cited supra. Further I find that this Tribunal in the case of Krishna HT cited supra, on identical facts, has held in para 6 as under:-

6. After considering the submissions of both sides and perusal of material on record, I find that it is an admitted fact that the appellant had paid the service tax along with interest much before the issuance of the show-cause notice. I also find that after payment of service tax and the interest, the appellant vide the letter dt. 22/01/2013 informed the Assistant Commissioner regarding the said payment of service tax and interest and requested not to issue show-cause notice under Section 73(3) of the Finance Act, 1994. Further I find that the case of the appellant is squarely covered by Section 73(3) of the Finance Act because after the payment of service tax along with interest before issuance of show-cause notice, he informed the authorities for not issuing the show-cause notice. Further the decisions relied upon by the appellant are squarely applicable in the present case and therefore following the ratio of the said decisions, I am of the view that the impugned order is not sustainable in law. Accordingly, I set aside the impugned order by allowing the appeal of the appellant.

Therefore by following the ratio of the above cited decision, I hold that appellants are not liable to pay the penalty under Section 78, which is set aside. As far as, penalty under Rule 7c read with Section 70 is concerned, it is also set aside because the same Rule 7 is not applicable in the facts and circumstances of the case. Penalty under Section 77(1)(a) is upheld because the appellant failed to get themselves registered under the service tax within the stipulated time.

7. In view of my discussion above, penalty under Section 78 and Rule 7c read with Section 70 is dropped and penalty of Rs.10,000/- under Section 77(1)(a) is upheld. Appeal is disposed of in above terms.

(Operative portion of the Order was pronounced
in Open Court on **04/06/2019**)

S.S GARG
JUDICIAL MEMBER

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