CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

ST/329/2009-DB

[Arising out of Order-in-Appeal No. 12-2009 dated 07/01/2009 passed by Commissioner of Central Excise(Appeals) , MANGALORE]

Motisham Builders & Developers Empire. 6th Floor, M.g.road, MANGALORE - 575003 KARNATAKA	Appellant(s)

VERSUS

Commissioner of Central Excise and Service Tax Mangalore 7TH FLOOR...TRADE CENTRE, BUNTS HOSTEL RD., MANGALORE, - 575003 KARNATAKA	Respondent(s)

Appearance:

Shri Dayanand, CA **VISHNU DAYA & CO** CHARTERED ACCOUNTANTS, GF NO.7, KARUNA COMPLEX, NO.337, SAMPIGE ROAD, MALLESWARAM, BANGALORE - 560003 KARNATAKA	For the Appellant
Shri Veerabadra Reddy, Addl. Commissioner(AR)	For the Respondent

CORAM:

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

HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20504 / 2019

Date of Hearing: 26/06/2019

Date of Decision: 26/06/2019

Per : S.S GARG

The present appeal is directed against the impugned order dt. 07/01/2009 passed by the Commissioner(Appeals) whereby the Commissioner(Appeals) has confirmed the demand of service tax along with interest and also imposed penalty of Rs.1000/- under Section 77 and penalty of Rs.45,97,048/- under Section 78.

2. Briefly the facts of the present case are that the appellants are provider of commercial or industrial construction service and are paying service tax but they have not paid full amount of service tax for the month of June to September 2005 because the service tax levy was introduced for the first time on construction of residential complex w.e.f. 16/06/2005 and there was lot of confusion as to computation of tax, different clarification given by different people including the Departmental officers. Thereafter the appellant approached the Range Office with computation of amount of service tax for the period 01/04/2005 to 31/03/2006 and on the basis of guidance of the Range Officer, the appellant paid the service tax along with interest before the issuance of the show-cause notice but in spite of payment of service tax along with interest, show-cause notice was issued to the appellant and after following the due process, the demand was confirmed along with interest and penalties. Payment of service tax along with interest was appropriated and penalty was imposed under Sections 77 and 78. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who rejected the same. Hence the present appeal.

3. Heard both sides and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable as the same has been passed without considering the facts and the law. He further submitted that there was reasonable ground for not paying the service tax during the

period in dispute on account of the confusion regarding the method of computation of service tax on construction activity. He further submitted that on the basis of guidance provided by the Department, appellant paid the service tax along with interest before the issuance of the show-cause notice which is also appropriated in the impugned order. He further submitted that there was no suppression on the part of the appellant as the appellant has not suppressed any material fact with intent to evade payment of tax. Payment of service tax was delayed due to confusion and different clarifications issued by Departmental authorities. He further submitted that since the appellant has paid the service tax along with interest before issuance of show-cause notice, the Department, as per Section 73(3) should not have issued the show-cause notice. He further submits that this issue is no more res integra and has been settled by various decisions of the High Courts and Tribunal. In support of his contention that no notice needs to be issued under Section 73(3) of the Act, the appellant relied upon the following decisions:-

i. CCE&ST, LTU, Bangalore Vs. Adecco Flexione Workforce Solutions Ltd. [2012(26) STR 3 (Kar.)]
ii. Gupta Coal Field & Washeries Ltd. Vs. CST, Nagpur [2013(29) STR 166 (Tri. Mum.)]
iii. CST, Bangalore Vs. Master Kleen [2012(25) STR 439 (Kar.)]
iv. Hajarilal Jangid Vs. CC,CE&ST, Nagpur [2011(24) STR 510 (Tri. Mum.)]

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

6. After hearing both sides and perusal of the material on record, we find that in the present case, the service tax along interest has been paid before the issuance of the show-cause notice. Further we find that the appellant has not suppressed any facts with intent to evade payment of tax. Further we note that this issue is no more res integra and has been settled by various case laws cited supra. By

following the ratio of the above cited decisions, we hold that the imposition of penalties under Section 77 & 78 is not sustainable in law and therefore, we set aside the same by allowing the appeal of the appellant.

(Operative portion of the Order was pronounced in Open Court on **26/06/2019**)

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

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