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

Appeal(s) Involved:

ST/20464/2017-SM

[Arising out of Order-in-Appeal No. 1754/2016 dated 16/12/2016 passed by the Commissioner of Service Tax, Bangalore Service Tax (Appeals)]

Royal Credit Services
Prof. Sri G Gangadhar, No. 28,
7th Cross, 13th Main, Shakambari
Nagar, Pipeline Road, J.P Nagar
1st Phase
Bangalore – 560 078
Karnataka

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 – 560 071
Karnataka

Respondent(s)

Appearance:

Shri. G.S. Bhat, CA
GSVP And Associates
478/2, 8th Cross, Narayan Nagar
II Stage Doddakallasandra
Bangalore – 560 062
Karnataka

For the Appellant

Shri. Madhup Sharan, Asst. Commr. (AR)

For the Respondent

Date of Hearing: 02/05/2019
Date of Decision: 14/08/2019

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

Final Order No. 20634/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 16.12.2016 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant. Briefly the facts of the present case are that the appellants are engaged in providing taxable services under the category of "Business Auxiliary Service" i.e. recovery of cash and cheques from the personal loan customers of the ICICI Bank. They are registered under Service Tax for providing taxable service of "Business Auxiliary Service". Investigation conducted by DGCEI against the appellant revealed that the appellant is not regular in discharging their service tax liability and accordingly after following the principles of natural justice, the original authority confirmed the demand of Rs. 5,12,045/- (Rupees Five Lakhs Twelve Thousand and Forty Five only) for the period January 2013 to March 2014. Aggrieved by the said order, appellant filed appeal before the Commissioner who rejected the same.

2. Heard both the parties and perused the records.

3. Learned counsel appearing for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without appreciating the facts and the law. He further submitted that appellant could not pay the service tax due to financial constraint and subsequently paid the service tax amounting to Rs. 5,12,045/- (Rupees Five Lakhs Twelve Thousand and Forty Five only) for January

2013 to March 2014. He further submitted that failure to pay the service tax was due to reasonable cause and there was no intention to evade the payment of tax. He prayed that the appellant should be given the benefit of Section 80 of the Finance Act as there was a reasonable excuse for failure to pay the service tax. He also submitted that the amount of commission received by the appellant is cum-tax and he has not charged the service tax separately. In order to prove this, the appellant has submitted the statement of commission received from ICICI Bank. Appellant is not raising any bill on ICICI Bank to get their commission amount as the commission is given by the ICICI Bank as per the agreement. The commission given by the ICICI Bank is inclusive of service tax and he has given the details of the commission received from ICICI Bank based on which the demand is raised. He further submitted that if the appellant is given the cum-tax benefit, then his liability of service tax comes to Rs. 4,57,183/- (Rupees Four Lakhs Fifty Seven Thousand One Hundred and Eighty Three only) as per the calculation given in the table annexed with the appeal. He has further prayed that his service tax liability should be recomputed and the excess service tax paid by him needs to be adjusted against the interest payable on delay in payment of service tax.

4. On the other hand the learned AR defended the impugned order and submitted that the appellant has also defaulted in payment of service tax for the earlier period and during the year 2012 he has opted for VCES Scheme. He further submitted that the appellant has collected the service tax and has not paid the same. Therefore, he is not entitled to any benefit under Section 80 of the Finance Act, 1994. In support of his submission, he relied upon the following decisions:

a. Ketan Engineering Services Pvt. Ltd. Vs. CCE & ST, *Surat – 2014 (36) S.T.R. 196 (Tri.-Ahmd.)*

b. *Mohtamaan Industries Vs. CCE, Cus. & S.T., Pune –I – 2016 (42) S.T.R. 568 (Tri.-Mum.)*
c. *CCE, Mangalore Vs. K. Vijaya C. Rai – 2011 (21) S.T.R. 224 (Kar.)*

5. After considering the submissions of both the parties and perusal of the material on record, I find that admittedly the appellant has not discharged the service tax liability from January 2013 to March 2014 and has agreed to pay the same along with interest. Further I find that the appellant paid the service tax liability of Rs. 5,12,045/- (Rupees Five Lakhs Twelve Thousand and Forty Five only) for the period January 2013 to March 2014 as demanded in the show-cause notice but has not paid the interest. Further I find that the appellant is not charging the service tax from the ICICI Bank. He does not raise any bill on ICICI but get commission as per the agreement and service tax is not charged over and above the commission which means that the commission given by the ICICI Bank is inclusive of service tax. Further I find that the appellant has given the details of the commission received from ICICI Bank on the basis of which the Revenue quantified the demand. Since the appellant is not charging the service tax separately and whatever commission is received, the Department has computed the service tax liability on the same which is to be considered as cum-duty and the appellant is entitled to the benefit of cum-duty and the entire demand is to be recomputed by giving the benefit of cum-duty to the appellant. Since the benefit of cum-duty has not been given, therefore I remand the case back to the original authority to pass a *De novo* order and quantify the demand of service tax after giving the benefit of cum-duty and excess amount if any paid will be adjusted against interest which the appellant is liable to pay for the delay in payment of service tax. Since the appellant was aware of

his service tax liability because for the earlier period he has opted for VCES Scheme and paid the service tax. Therefore, intentionally he did not pay the service tax and therefore he is not entitled to get the benefit under Section 80. The amount of penalty will also be recomputed after giving the cum-duty benefit to the appellant. The appeal is disposed of on the above terms.

(Order was pronounced in Open Court on **14/08/2019**)

(S.S GARG)
JUDICIAL MEMBER

Indira...