CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

ST/687/2008-DB

[Arising out of Order-in-Original No. 39/2008 dated 25/09/2008 passed by CST, Bangalore]

Silver Lake Information Systems Pvt Ltd No.282, 2nd Floor, Mvs Complex, Katriguppe Circle, Bsk Iii Stage, Bangalore - 560085	Appellant(s)

VERSUS

Commissioner of Service Tax Bangalore Service Tax- I 1ST TO 5TH FLOOR, TTMC BUILDING,above BMTC BUS STAND,DOMLUR BANGALORE, - 560071 KARNATAKA	Respondent(s)

Appearance:

Shri Banumurthy, Advocate #466, 9TH CROSS, 1ST BLOCK, JAYANAGAR, NEAR MADHAVAN PARK, BANGALORE - 560011 KARNATAKA	For the Appellant
Shri Gopakumar, Jt. 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. 20797 / 2019

Date of Hearing: 23/09/2019
Date of Decision: 23/09/2019

Per : S.S GARG

The present appeal is directed against the impugned order dt. 25/09/2008 passed by the Commissioner whereby the Commissioner has confirmed the demand of service tax amounting to

Rs.50,06,708/- under Section 73(2) of the Finance Act, 1994 and appropriated the said amount out of the total amount of Rs.53,47,592/- already paid by the assessee. He also confirmed the demand of interest under Section 75 of the Act and also appropriated the amount of interest out of the amount of Rs.6,94,787/- already paid by the assessee. The Commissioner also imposed penalty under Sections 76, 77 and 78 of the Act.

2. Briefly the facts of the present case are that the appellants are providing services under the category of 'Management Consultancy Services' and Business Auxiliary Services (BAS) and they are providing training to IBM and its client on the software related to AS/400 Mainframe computer. The appellant obtained service tax registration dt. 01/03/2005 under the category of 'Management Consultancy Services' and BAS and subsequently they also obtained registration under the category of 'Commercial Training and Coaching Services'. On the basis of information gathered that the appellant is providing services in the nature of commercial training and coaching and have not paid service tax under the said services, investigations were undertaken. During the course of investigation, entire amount of service tax along with service tax was remitted. Thereafter a show-cause notice dt. 21/012008 was issued demanding service tax under the heading 'Commercial Training and Coaching Service' along with interest and penalty by invoking extended period of limitation. Appellant contested the show-cause notice and submitted that the service provided by them are in the nature of 'Information Technology Service' which is excluded from the service tax under the heading BAS. The appellant also submitted that since they paid the service tax along with interest well before the issue of show-cause notice, penalty should be dropped. After considering the submissions of the parties, the learned Commissioner of Service Tax confirmed the demand along with interest and penalty and also appropriated amount of service tax and interest paid by the appellant.

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 has been passed without properly appreciating the facts and law. He further submitted that the appellant has a good case on merits as the appellant is rendering the Information Technology Service which was excluded under the heading BAS. But he further submitted that since the appellant has paid the service tax before the issue of show-cause notice, the penalty should be dropped and he will not insist that the Tribunal should decide the issue on merits. In support of his submission that once the service tax along with interest is paid before the issue of show-cause notice, the authorities should not issue show-cause notice under Section 73(3) of the Finance Act, 1994. He relied upon the following decisions:-

i. CCE Vs. Top Detective and Security Services Pvt. Ltd. [2005(180) ELT 363 (Tri. Mumbai)]
ii. Jhunjarji Investment Pvt. Ltd. CCE [2005(186) ELT 57 (Tri. Kolkata)]
iii. CCE Vs. Malancha Photographers [2006(1) STR 101 (Tri. Kolkata)]
iv. CCE Vs. Sanghai & Associates [2006(1) STR 214 (Tri. Kolkata)]
v. Majestic Mobikes Pvt. Ltd. Vs. CST [2008(11) STR 609 (Tri. Bang.)]
vi. CCE Vs. Addeco Flexione Workforce Solucations Ltd. [2012(26) STR 3 (Kar.)]
vii. CCE Vs. Motor World [2012(27) STR 225 (Kar.)]

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

6. After considering the submissions of both the parties and perusal of the material on record and the various decisions relied upon by the appellant cited supra, we find that the appellant paid the service tax along with interest before the issue of show-cause notice which is not in dispute. The appellant did not press on merits of the case and confined his submissions to dropping of various penalties imposed on them. Further we find that during the relevant period, there were conflicting decisions regarding the classification of the impugned service. The Department has also not brought any evidence on record to show that there was suppression of material fact with intent to evade payment of tax. Since the issue of penalty is squarely covered by the decision of the Karnataka High Court cited supra and by following the said decision, we drop the penalties under Sections 76, 77 and 78 of the Finance Act, 1994. Appeal is allowed.

(Operative portion of the Order was pronounced
in Open Court on **23/09/2019**)

S.S GARG
JUDICIAL MEMBER

P. ANJANI KUMAR
TECHNICAL MEMBER

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