CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

DIVISION BENCH
COURT NO. I

APPEAL NO. ST/390/2010-[DB]

[Arising out of Order-in-Appeal No. 38-ST-CHD-II-2009 dated 22.12.2009 passed by the Commissioner of Central Excise (Appeals), Chandigarh-II]

Date of hearing/decision: 07.05.2018

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

Aggarni Automotives	**:**	**Appellant(s)**
VS		
C.C.E. & S.T., Chandigarh	**:**	**Respondent(s)**

Appearance:
Present for the Appellant(s): Mr. Jatinder Mohan, Consultant
Present for the Respondent(s): Mr. A.K. Saini, A.R.

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

FINAL ORDER NO. 62339/2018

Per : Devender Singh

The appellants are in appeal against the impugned order dt. 22.12.2009.

2. Brief facts of the case are that the appellants are engaged in providing taxable services in the category of the "Authorized Service Station" and "Business Auxiliary Services". On the basis of an information, their balance sheets for the year 2004-05 and 2005-06 were scrutinized and it was found that an amount of Rs.5,61,254/-

was received on account of the job work done, which did not involve any manufacturing activity under the brand name of 'Bajaj'. Department felt that the appellants were providing 'Business Auxiliary Service'. Accordingly, a show cause notice was issued to the appellants demanding service tax of Rs.57,248/- along with interest and proposing penalties under various sections of the Finance Act, 1994. The matter was adjudicated and the demand along with interest was confirmed. Penalties were imposed on the appellants under Sections 76, 77 & 78 of the Act. Aggrieved from the order of adjudicating authority, the appellants went in appeal before Commissioner (Appeals). The first appellate authority upheld the penalties under Sections 76 and 78. However, the penalty of Rs.4,000/- under Section 77 was reduced to Rs.3,000/-. Aggrieved from the order of Commissioner (Appeals), the appellants have filed this appeal.

3. Ld. Consultant for the appellants submits that the appellants do not want to contest the demand of service tax and interest, which they have already paid on 15.03.2007 much before the issuance of the show cause notice on 01.10.2007. He further submits that levy was new at the time and they were under *bonafide* belief that the job work charges were not liable to service tax as the job work has been done by outside small workshops/mechanics, for which they had no facilities in their service station. He pleaded that their *bonafide* belief is evident from the fact that the duty was immediately deposited after it was pointed out by the Department and before issuance of the show cause notice. He, therefore, prayed for waiver of penalties invoking Section 80 of the Finance Act.

4. Ld. A.R. reiterated the findings in the order of the Commissioner (Appeals).

5. Heard both the sides and perused the record.

6. We find that the appellants are not contesting the demand of Service Tax and interest thereon. Accordingly, the service tax of Rs.57,248/- and interest thereon is upheld. As for penalties, we find that the service tax was levied on Business Auxiliary Service w.e.f. July 2003. Therefore we find force in the contention of the appellants that they were under *bonafide* belief, due to the said service being new, that job work which they got done from outside small workshops/mechanics was not liable to service tax. This is also supported by their immediately paying the service tax on being pointed out by the Department and before issuance of the show cause notice. In these circumstances, it cannot be said that the appellants had intention to evade service tax. Therefore, the appellants have made a fit case for waiver of penalties invoking Section 80 of the Act. We, therefore, set aside the penalties under Sections 76, 77 & 78 invoking provisions of Section 80 of the Act.

7. In the result,

(i) Demand of Service Tax and interest thereon is upheld.

(ii) Penalties are set aside.

8. The appeal is disposed off in above terms.

(Operative part pronounced in the court)

(Ashok Jindal)
Member (Judicial)

(Devender Singh)
Member (Technical)

RAS'