CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Appeal No. ST/60399/2019-[SM]

(Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-670-18 dated 15.03.2018 passed by the Commissioner (Appeals), Ludhiana)

M/s Goyal Trading Co. **......Appellant**
(C/o Amarjit Associates, 7-S, Sant Nagar,
Patiala, Punjab)

VERSUS

Commissioner of C.E. & S.T., Ludhiana **......Respondent**
(Central Excise House, F Block, Rishi Nagar,
Ludhiana, Punjab)

APPEARANCE:

Mr. Deepinder Singh, Consultant for the Appellant

Mr. Vijay Gupta, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 60605/2019

DATE OF HEARING: 29.05.2019
DATE OF DECISION: 29.05.2019

PER ASHOK JINDAL:

The appellant is in appeal against the impugned order praying for waiver of penalty.

2. The facts of the case are that the appellant is registered with the Service Tax department and providing various services filing their ST-3 returns. On the basis of the gross receipt shown to the Income Tax department, the figures of ST-3 returns were compared and it was found that the appellant is showing less receipt of services provided by them in ST-3 returns compared to income tax returns.

The appellant was called several times to explain the reason of difference in figures but for two years, the appellant kept lingering on by not providing the data for co-relation of the figure of income tax returns and ST-3 returns. Later on, the appellant admitted the short payment of service tax and paid service tax. Thereafter, the interest was also paid for the intervening period. After that, a show cause notice was issued to the appellant on 23.10.2015 within one year of the acceptance of short fall by the appellant to impose the penalties under Sections 77 and 78 fo the Finance Act, 1994. The matter was adjudicated. The amount paid was appropriated and penalties under Sections 77 and 78 of the Finance Act, 1994 were imposed. Against the order of imposition of penalties, the appellant is before me.

3. The learned Consultant appearing on behalf of the appellant submits that the appellant was under the bonafide belief that the person who is paying the commission to the appellant, he has to pay service tax, therefore they did not pay service tax. In that circumstance, penalty be waived.

4. On the other hand, the learned A.R. submits that the appellant kept lingering on to explain the reason of short fall for two years, which shows the melafide intention of the appellant, therefore, penalty is rightly imposed.

5. Heard the parties and perused the records.

6. On perusal of the records, nowhere the appellant has made any defence regard the short fall of service tax paid by them. If the same is not detected by the Revenue, the said short fall remains a short fall of service tax which the appellant would have enjoyed. As the short fall has come during the investigation itself and the appellant did not explain the reasons and kept lingering on the matter for two years, in that circumstance, melafides of the appellant have been established by the Revenue. Accordingly, penalty is rightly imposed on the appellant, therefore, the appellant is not entitled for any relief from this Tribunal. In that circumstance, I upheld the impugned order.

7. In result, the appeal is dismissed.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

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