IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

**ST/61/2011**

(Arising out of Order-in-Appeal. No. 483/2010 dated 25.10.2010 passed by the Commissioner of Central Excise, Madurai).

M/s. Sakthi Sugars Ltd. : Appellant

Vs.

CC& ST, Madurai : Respondent

Appearance

Shri M.N. Bharathi, Advocate,
for the Appellant

Shri R. Subramaniyam, AC (AR)
for the Respondent.

**CORAM :**

**Hon'ble Ms. Sulekha Beevi, Member (Judicial)**
**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**

Date of Hearing/Decision: **23.03.2018**

FINAL ORDER No. **40994/ 2018**

**Per Bench**

The brief facts are that the appellants are engaged in the manufacture of Sugar and molasses are also registered with Service Tax Department under GTA Services. During the course of audit of accounts, it was noticed that or the period from 01.02.2005 to June 2006, the appellant had not discharged the service tax under GTA service on the freight paid exceeding Rs.750/- and not exceeding to Rs. 1500/- and had not disclosed the same in their ST-3 returns. After detecting the non-payment, the range officer vide letter dated 14.03.2007 requested the appellant to furnish the details of the freight amount on which exemption is claimed. Required details were given to the department only on 23.04.2007 in letter dated 18.04.2007. It appeared that the appellant suppressed the taxable value with an intend to evade payment of service tax and SCN dated 06.09.2007 was issued proposing to recover the service tax along with interest and also for imposing penalties. After due process of law, the original authority confirmed the demand of Rs.4,68,719/- along with interest and impose penalties under Section 77 & 78 of the Finance Act, 1994. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, the Ld. Counsel Shri M.N. Bharathi, submitted that the appellant is confining the contest in the appeal of penal action. He argued that the appellant had mistakenly interpreted the Notification No. 74/2004-ST dated 03.12.2004 and was discharging service tax on charges exceeding Rs. 1500/-. That they were under bonafide belief that they are not liable to pay service tax for the transportation charges below Rs.1500/-. To the letter dated 19.03.2007, the appellant had replied contending that they are not liable to pay service tax for the freight charges which is less than Rs. 1,500/- but more than Rs. 750/-. They did not discharge service tax only for the reason of confusion in interpreting the exemption notification. He relied upon the decision of the Tribunal in the case of *Shakthi Auto*

*Component Ltd. Vs. CCE & ST, Salem* by Final Order No. 40144/2017 dated 03.02.2017 and pleaded that the penalty may be set aside. He also relied upon the decision in the case of *Bestilo Packaging Pvt. Ltd. Vs. CCE, Chandigarh* – 2012 (25) STR 440 (Tri.-Del.). It was observed by the Tribunal that the said notification was difficult for the common man to understand and in the absence of contumacious conduct no penalty can be imposed.

3. The Ld. AR, Shri R. Subramaniyam, AC, reiterated the findings in the impugned order. He submitted that during the course of verification of accounts by the audit party the short payment of service tax came to light. The range officer vide letter dated 07.09.2006 appraised the legal provisions about the Notification No. 34/2004-ST and also directed them to pay the service tax. To this the appellant replied vide letter dated 29.06.2006 but however, did not pay the service tax. Thereafter the range officer directed them to furnish the details of the freight paid over and above Rs.750/- but below Rs.1500/- in respect of transportation of sugarcane and also transportation of store materials for the period from June 2005 to date. The assessee furnished the details vide letter dated 18.04.2007 upto the month of June 2006. They had stated that appellant had discharged the service tax from July, 2007 onwards. He argued that in spite of instruction from the department the assessee had not discharged the service tax liability on the transportation charges exceeding Rs.750/- but below Rs. 1500/- and were discharging service tax only on transportation charges more than Rs.1500/-. SCN issued

invoking the extended period as well as the penalties imposed are legal and proper as the assessee is guilty of suppression of facts with intention to evade payment of service tax.

4. Heard both sides.

5. The Ld. Counsel for the appellants has confined his argument on the penalty imposed. The said Notification No. 34/2004 dated 03.12.2004 was indeed subject matter of litigation. The Notification exempted the taxable service provided by a goods transport agency to a customer, in relation to transport of goods by road in a goods carriage from the whole of service tax leviable under Section 66 of the Act, where,-

> i) the gross amount charged on consignments transported in a goods carriage does not exceed rupees one thousand five hundred; or
>
> ii) the gross amount charged on an individual consignment transported in a goods carriage does not exceed rupees seven hundred fifty.
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> Explanation:- For the purposes of this notification, "an individual consignment" means all goods transported by a goods transport agency by road in a goods carriage for a consignee.
>
> 2. This notification shall come into force on the first day of January, 2005.

The appellant was contesting the demand taking the view that the exemption of the notification would be available if the gross amount charged on consignments transported in a goods carriage does not exceed Rs. 1,500/-. Thus, according to him clause-2 of the Notification would apply in case of multiple consignments, if the charge of an individual consignment does not exceed Rs. 750/-. Undisputedly, the appellant was discharging service tax on transportation charges exceeding Rs. 1,500/-. They were under a bonafide belief that an individual consignment was basis of the liability. In spite of instruction of the department, they were contesting the matter. In the case of *Bestilo Packaging Pvt. Ltd.* (supra), the Tribunal had observed that it was difficult for a common man to understand these riders in the notification. No contumacious conduct with an intention to evade payment of duty has been established, the appellants were bonafidely litigating the issue. In these circumstances, the penalty imposed is unwarranted and requires to be set aside which we hereby do.

6. The impugned order is modified to the extent of setting aside the penalty imposed without disturbing the demand of service tax and interest thereof. The appeal is allowed partially in above terms with consequential relief.

(Operative part of the Order pronounced in the open Court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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