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

Appeal No. ST/61/2012

(Arising out of Order-in-Appeal No.352/2011 dated 30.11.2011 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Chettinad Earth Movers Pvt. Ltd. Appellant

Vs.

CCE, Madurai Respondent

Appearance

Shri R. Parthasarathy, Consultant for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

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

Date of Hearing / Decision: **02.05.2018**

Final Order No. **41422 / 2018**

Per Bench

Brief facts are that the appellants are engaged in providing various services and they entered into an agreement for annual maintenance of mining equipment of M/s. Chettinad Cement Corporation. According to the department, the said activities fall under the category of management, maintenance or repair service and that appellants are liable to pay service tax. Show cause notice was issued for the period 4/2005 to

3/2006 proposing to demand service tax along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand, interest and penalties. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, ld. consultant Shri R. Parthasarathy submitted that the appellant is contesting only the penalty imposed and has already paid service tax along with interest. It is submitted that the appellant was under the bonafide belief that the maintenance and repair activities of machinery used for mining activities would fall under the category of mining services. Since such services were not taxable during the disputed period, the appellant failed to discharge service tax. That there was no intention to evade payment of service tax.

3. The ld. AR Shri S. Govindarajan reiterated the findings in the impugned order.

4. Heard both sides.

5. The appellant is contesting only the penalty imposed. It is brought out that the appellant has paid the service tax and also the interest thereon. Nothing is brought out from the records to establish that there was intention on the part of the appellant to evade payment of service tax. The mining services was brought into the taxable net only with effect from

1.5.2006 and the appellant was under the bonafide belief that the repair and maintenance of equipment used for mining service also would fall under the said category. The details / figures for quantification of the demand has been taken from the accounts furnished by the appellant. That it is evident that the appellant has not suppressed any facts. The jurisdictional High Court in the case of K. Gopalakrishnan Vs. Commissioner of Central Excise, Chennai – 2017 (7) GSTL 292 (Mad.) has held that when there is no suppression of facts with intention to evade payment of service tax, the penalty imposed under section 78 is unwarranted. On appreciating the evidence and relying upon the ratio laid in the above case, we hold that the penalty imposed under section 78 is unjustified and requires to be set aside which we hereby do.

6. In the result, the impugned order is modified to the extent of setting aside the penalty imposed under section 78 only without disturbing the remaining portion of the order. The appeal is partly allowed in the above terms with consequential relief, if any.

(Operative portion of the order was pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex