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

S.No.	Appeal No.	Arising out of
1.	ST/718/2010	Order-in-Appeal No. 141/2010 dated 17.8.2010 passed by Commissioner of Central Excise (Appeals), Trichy
2.	ST/719/2010	Order-in-Appeal No. 142/2010 dated 17.8.2010 passed by Commissioner of Central Excise (Appeals), Trichy
3.	ST/720/2010	
4.	ST/46/2012	Order-in-Appeal No. 114/2011 dated 18.10.2011 passed by Commissioner of Central Excise (Appeals), Trichy

M/s. Karur Vysya Bank Ltd. Appellant

Vs.

CCE, Trichy Respondent

Appearance

Shri N. Quidir Hoseyn, Advocate for the Appellant
Shri K. Veerabhadra Reddy, JC (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: **01.05.2018**

Final Order Nos. **41386-41389 / 2018**

Per Bench

These appeals filed by the same assessee are heard together and are disposed by this common order.

2. In Appeal No. ST/718/2010, service tax demand is confirmed on the Visa charges paid by the appellant holding

that the appellant is liable to pay service tax for the period 18.4.2006 to 2/2008 under reverse charge mechanism. In Appeal Nos. ST/719 & 720/2010 and ST/46/201, service tax demand has been confirmed on the commission received by the appellant from various insurance companies.

3. On behalf of the appellant, ld. counsel Shri Quidir Hoseyn submitted that in Final Order No. 40574/2018 dated 6.3.2018, in the appellant's own case, the Tribunal has held that the visa charges paid by the appellant is subject to levy of service tax under reverse charge mechanism. Commissioner (Appeals) set aside the demand prior to the period 18.4.2006. The issue whether assessee is liable to pay service tax under reverse charge mechanism was contentious for a long period and was settled by the decision of the Hon'ble Supreme Court in the case of Indian National Shipowners Association -2010 (17) STR J57 (SC). He submitted that the appellant is not contesting the demand of service tax or the interest thereon and is confining the contest only on the penalty imposed under section 78 of the Finance Act, 1994. That since the issue was contentious, there was no suppression of facts or intention to evade payment of duty and therefore the penalty may be set aside.

4. In respect of demand of service tax confirmed for the commission received from insurance companies under Business Support Services in appeal Nos. ST/719 &720/2010 and

ST/46/2012, the ld.counsel submitted that the issue has been decided against the appellant in their own case vide Final Order No. 40360/2018 dated 8.2.2018. It is submitted by him that appellant is not contesting the service tax or the interest thereon but is confining the contest to the penalties imposed. In ST/719/2010 and ST/46/2012, penalties under sections 76 and 77 have been imposed. In ST/720/2010, besides penalty under section 77, penalty under sections 76 and 78 have been imposed. He argued that the penalties under section76 and 78 cannot be simultaneously imposed and further finding that appellant was under bonafide belief that such activities do not fall under the category of Business Support Services. The appellant had failed to discharge the service tax only on the wrong interpretation of the provisions. That the Tribunal in the above stated final order has set aside the penalties imposed.

5. The ld. AR Shri K. Veerabhadra Reddy reiterated the findings in the impugned order.

6. Heard both sides.

7. The ld. counsel has submitted that in all these cases, the appellant is contesting only the penalties imposed. In ST/718/2010, period is immediately after 18.4.2006. The issue whether an assessee is liable to pay service tax under reverse charge mechanism was contentious for a long time and later settled by the decision as relied by the ld. counsel for the

appellant. In such event, we are of the view that the penalty imposed under section 78 is unwarranted and requires to be set aside which we hereby do.

8. In all the three other appeals, ST/719/2010 and ST/46/2012, the penalties imposed are under sections 76 and 77 of the Finance Act, 1994. The Tribunal in the appellant's own case for a different period had set aside the penalties imposed observing that the appellant had taken wrong interpretation of the said provision under section 65(104c). The Tribunal in the said final order had set aside the penalty imposed under section 76 without disturbing the penalty imposed under section 77 as well as the demand and the interest thereon. Further, in ST/720/2010, both penalties under sections 76 and 78 have been imposed. As rightly argued by the ld. counsel, both penalties cannot sustain simultaneously.

9. From the above discussions, we are of the considered opinion that the penalties imposed under sections 76 and 78 is unwarranted and requires to be set aside, which we hereby do. However, we do not set aside the penalty imposed under section 77 of the Act.

10. In the result, in Appeal No. ST/718/2010, the impugned order is modified to the extent of setting aside the penalty imposed under section 78 only. In ST/719/2010 and

ST/46/2012, the penalty imposed under section 76 is set aside without disturbing the demand of service tax, interest and the penalty imposed under section 77. In Appeal No. ST/720/2010, the penalties imposed under sections 76 and 78 are set aside without disturbing the demand of service tax, interest and the penalty imposed under section 77. The appeals are 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