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

ST/251/2011

(Arising out of Order-in-Appeal No. 17/2011-ST dated 19.01.2011 passed by the Commissioner of Central Excise & Service Tax (Appeals), Coimbatore).

M/s. Star Vision Cable Network : Appellant

Vs.

CCE & ST, Coimbatore : Respondent

Appearance

Shri P. Aravind Thangam, C.A.,
for the Appellant

Shri S. Govindarajan, 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: **09.04.2018**

FINAL ORDER No**.** **41332/2018**

Per Bench

M/s. Star Vision Cable Network, the appellants herein, is a cable operator. They received the signals from a multisystem operator M/s. SCV, Coimbatore. Substantial portion of the amount collected from the customers were paid to the multisystem operator and appellants retained a small portion thereof. The appellants voluntarily registered themselves with the service tax department and discharged service tax liability on the amount retained by them. Appellants also filed ST-3 returns indicating the amount retained by them as taxable value. On scrutiny of ST-3 returns filed, it emerged that the amounts declared in the ST-3 returns were much lower than that paid to the link operator and the subscription collected. SCN dated 22.03.2006 was issued for the period from 08/2002 to 03/2005, proposing service tax demand, interest and imposition of penalties under various provisions. On adjudication, the adjudicating authority confirmed the proposals made in the SCN vide Order-in-Original dated 27.11.2009. On appeal, the Commissioner (Appeals) upheld the order of the adjudicating authority.

2. On behalf of the appellants, Shri P. Aravind Thangam, C.A. appeared and submitted that appellants are contesting only the imposition of penalty. Appellants were new to service tax levy and there was some confusion that prevailed on the taxability as well as on valuation. The fact of filing ST-3 returns is not disputed by the department. They have also declared the discharge of service tax liability on the amount retained by the appellant. The appellants were under the bonafide belief that service tax would be leviable only on the amounts retained by them and there was no suppression of facts or intent to evade payment of tax. He prayed that the penalties may be set aside considering the appellant's bonafide belief and actions. He further submitted that SCN has not alleged any mensrea on the

part of the appellant and mere non-payment or short payment cannot be construed for levy of penalty on the appellant. He submitted that it is a fit case to invoke the provisions of Section 80 of Finance Act, 1994, in the absence of mensrea and reasonable cause for failure to discharge of service tax. He relied on the following case laws"-

1. *Polimer Cable Network Vs. CCE, Salem*

   2018 (2) TMI 402 (Tri.Chen.)

2. *Trinetra Cable Vs. CST*

   2016 (22) TMI 709 (Tri.Del.)

3. *Indusland Media & Communication Ltd. Vs. CST*

   2017 (5) TMI 239 (Tri.-Bang.)

He submitted that the issue involved in all these cases relate to cable operator services and various benches of the Tribunal have given relief from penalty for the cable operators.

3. The Ld. AR, Shri S. Govindarajan, AC, supported the impugned order. He submitted that the appellants have contravened the Sections 68, 67 and 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994 as they have not filed ST-3 returns for the period form 08/2002 to 03/2003 and short paid the service tax for the period from 08/2002 to 08/2004 and filed the return for the period 10/2004 to 3/2005 belatedly. Therefore, they are liable for penalty under Sections 76,77 and 78 of the Finance Act, 1994. The adjudicating authority is correct in imposing various penalties and the

Commissioner (Appeals) has not erred in upholding the same. Hence penalties imposed may be sustained.

4. Heard both sides.

5. On perusal of the case records, we find that the appellants were brought into the service tax net by the Finance Act, 2002 w.e.f 16.08.2002 by the introduction of Section 65 (22) read with Section 65 (105)(zs) of the Finance Act, 1994. The adjudicating authority in his findings in para 14 has stated that "I find that there is no proof/documentary evidence in the file to prove the collection of subscription of Rs. 22,12,289/- from the customers". In absence of any specific evidence for the department, collection amount as voluntarily disclosed by the appellant should have been accepted. There is no allegation of suppression in the SCN. Moreover, the appellants contest only the penalties imposed on them. The case laws relied on by the appellants are to the effect that in respect of an assessee neither receiving television signals nor involved in distribution of such signals, but merely being an intermediary between MSO and franchisees (Local Cable Operator), and entertained bona fide belief of non-leviability of tax on them as Cable Operator, penalty not imposable under Sections 77 and 78 of Finance Act, 1994. In the case of Trans Yamuna Communication Ltd., (supra), the Tribunal held as under:-

> "**4.** I have heard both the sides and perused the appeal records. As noted above, the tax liability is not in dispute. It

appear that the scope of activities undertaken by the appellant is not falling under generally understood activities of cable operator who is involved in distribution of television signals to various clients. Admittedly, the television signals received from satellite is managed and handled through various layers of persons/activities till it reaches the ultimate customer. The appellant's role is as an intermediatory and apparently there could be a *bona fide* belief on their part regarding the tax liability under the said category. As already noted that they are not acting as a local cable TV operator in transmitting signals to the clients. Neither they are involved in receiving satellite signals as a MSO. The Finance Act, 1994 borrows the definitions of 'Cable operator' and 'Cable service' from Cable Television Network (Regulation) Act, 1995. Considering scope of definition under Section 2(aa) of the said Act there is a possibility of *bona fide* belief for non-tax liability. Considering the ratio followed by the Tribunal in the abovementioned cases and also considering the facts of the present case, I find that it is a fit case for invoking the provision of Section 80 for waiver of penalties imposed on the appellant. Accordingly, the penalties are set aside and the appeal is allowed only to that extent."

6. Following the ratio of the above said decision, the penalties imposed on the appellants under Section 76, 78 and 78 of the Finance Act, are set aside without disturbing the demand and interest confirmed in the impugned order.

7. Appeal allowed on above terms.

(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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