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

Appeal No.ST/142/2012

[Arising out of Order-in-Appeal No.CMB-CEX-000-APP-221-11 dt.05.12.2011 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore]

Coimbatore Steel Corporation — Appellant

Versus

Commissioner of Central Excise and Service Tax,
Coimbatore — Respondent

Appearance:

Shri J.Shankaraman, Advocate
For the Appellant

Shri B.Balamurugan, 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 : 15.5.2018

Per Bench

<u>FINAL ORDER No.</u>

Brief facts are that the appellants are dealers in MS Scrap. They had incurred Freight charges towards transportation of goods by road (GTA). As the appellants did not discharge service tax for GTA services, Show Cause Notice was issued demanding the sum alongwith interest and for imposing penalties. After due process of law, the original authority confirmed the demand of Rs.2,43,017/- alongwith interest and imposed penalty u/s.76 of the Finance Act, 1994. Though the show cause notice proposed to impose penalty u/s.78 also, the original authority had not imposed penalty u/s.78. Aggrieved by this, the department filed appeal before the Commissioner (Appeals). Vide order impugned herein, the Commissioner (Appeals) set aside the penalty imposed u/s.76 and imposed equal penalty u/s.78. Being aggrieved the appellant is now before the Tribunal.

2. On behalf of the appellant, the Ld.Counsel, Shri J.Shankaraman submitted that during the relevant period, there was much confusion as to whether the appellant is liable to pay service tax under GTA services. The said services become taxable with effect from 1/1/2005 and under Rule 2 (1)(d)(V) it was provided that the service tax in respect of GTA services has to be paid by persons falling under the particular categories. The appellant was under the bonafide belief that they do not fall under any such category mentioned therein and therefore did not discharge the service tax. There was no deliberate intention to evade payment of service tax. He adverted to the orders passed by the authorities below and submitted that there is absolutely no finding with regard to the fact that appellant has suppressed facts with intention to evade payment of tax. In the absence of evidence adduced by the department that the appellant has deliberately evaded payment of tax, the penalty imposed u/s.78 cannot sustain.

3. The Ld.AR, Sh.B.Balamurugan submitted the findings in the impugned order.

4. Heard both sides.

5. We have perused the impugned order. In para 4.2, the Commissioner (Appeals) has not rendered any finding as to whether there was any act evidencing suppression of facts on the part of the appellant. He has merely stated that since the demand of service tax

invoking the larger period has been confirmed, the penalty u/s.78 has to be imposed. It has to be noted that the original authority has not imposed any penalty u/s.78, though the demand was confirmed. There is no discussion by the original authority that there was any suppression of facts with intention to evade payment of tax on the part of the appellant. In the absence of such evidence, the penalty imposed u/s.78 cannot sustain. Further, during the relevant period, there was much confusion as to whether service tax under GTA would be applicable to the appellant and the issue being interpretational one, we are of the opinion that the penalty calls for waiver in terms of Section 80 of Finance Act, 1994.

6. In K.Gopalakrishnan vs CCE, Chennai 2017 (7) GSTL 292 (Mad.), it was held by the Hon'ble High Court that the suppression of facts with intention to evade payment of service tax has to be established for imposing penalty u/s.78 of the Act. In the absence of such evidence, we are of the considered view that the penalty imposed u/s.78 requires to be set aside which we hereby do. The impugned order is modified to the extent of setting aside the penalty imposed u/s.78 without disturbing confirmation of service tax demand or interest thereon. The appeal is allowed with consequential relief, if any.

(Operative part of the order pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

vsr