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

Appeal No.ST/150/2012

[Arising out of Order-in-Appeal No.146/2011 dt.09.12.2011 passed by the Commissioner of Customs & Central Excise (Appeals), Trichirapalli]

The Karur Vysya Bank Ltd. Appellant

Versus

Commissioner of Central Excise and Service Tax,
Tiruchirapalli Respondent

Appearance:

Shri Quidir Hoseyn.N, Advocate
For the Appellant

Shri K.P.Muralidharan, 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

FINAL ORDER No.

Brief facts are that the appellants are registered with the Service Tax Department under Banking and financial services, Business

Auxiliary Service etc. It was noticed that appellants are maintaining various Nostro and Vostro accounts with foreign banks to help their customers dealing in Export and Import business and paying / collecting bank charges for such services. Further, they were utilising the services of SWIFT, Belgium, for securely and reliably exchanging financial information relating to Banking transactions. The department was of the view that these charges are subject to levy of service tax under Banking and other Financial services.

2. Show Cause Notice was issued proposing to demand the service tax alongwith interest and also for imposing penalties. After due process of law, the original authority confirmed the demand for the period with effect from 18/4/2006 alongwith interest, but however waived the penalties invoking Section 80 of the Finance Act, 1994. Revenue filed appeal before the Commissioner (Appeals) against non-imposition of penalties. Vide order impugned herein, the Commissioner (Appeals) held that the waiver of penalties extending benefit of Section 80 is not sustainable and directed the adjudicating authority to impose penalty as per law. Aggrieved by such order, the appellants are now before the Tribunal.

3. The Ld.Counsel, Sh.Quidir Hoseyn appearing for the appellant submitted that the appellant is not contesting the liability of service tax or the interest thereon. The contest in the present appeal is confined to the penalty imposed. He submitted that whether the appellants are liable to pay service tax on the Vostro and Nostro Accounts and also on the SWIFT charges was under doubt being interpretational issue. The appellants did not pay service tax only because in the case of Nostro accounts as well as SWIFT, the

appellants believed that these are not taxable under Banking and Financial services. The department has sought to levy the service tax in these accounts under reverse charge mechanism and the issue whether the assessee is liable to pay service tax under reverse charge mechanism was under confusion until the law was settled by the case rendered in ***Indian National Ship Owners' Association 2009 (13) STR 235, Bombay*** which was upheld by the Hon'ble Apex Court. He therefore prayed that the order passed by the original authority invoking Section 80 and waiving the penalties may be restored.

4. The Ld.AR, Sh.K.P.Muralidharan supported the findings in the impugned order.

5. On perusal of records in para 41 of the Order-in-Original, the adjudicating authority has given reasons why no penalty should be imposed. The adjudicating authority has considered the whole issue as interpretative in nature and has waived the penalties by invoking Section 80 of the Act, ibid. After appreciating the facts, we are of the considered view that during the relevant period, the issue whether an assessee is liable to pay service tax under reverse charge mechanism was under much litigation and was settled by the decision rendered in the case of ***Indian National Ship Owners' Association (supra).*** This Tribunal in the case of Indian Overseas Bank Vs CST, Chennai, F.O.No.40920/18 dt.2.3.2018 has considered the very same issue and set aside the penalties, observing that the issue is interpretational in nature. Following the same, we are of the considered opinion that there being no evidence that the appellants is guilty of deliberate suppression of facts with intent to evade payment of service tax, the penalties imposed is unwarranted and requires to be set aside which

we hereby do. The impugned order imposing penalties is therefore set aside without disturbing the demand of service tax and interest thereon. The appeal is allowed with consequential reliefs, if any.

(Operative part of the order pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

vsr