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

ST/MISC/41041/2017 & ST/40047/2017

(Arising out of Order-in-Appeal No.578/2016 (STA-I) dated 19.09.2016 passed by the Commissioner of Service Tax (Appeals-I), Chennai).

Shri P. Vinod : Appellant

Vs.

CST, Chennai-I : Respondent

Appearance

Shri N.K. Bharath Kumar, C.A.,
for the appellant

Shri R. Subramaniyam, AC (AR)
for the Respondent.

CORAM:

Hon'ble P. DINESHA, Member (Judicial)

Date of Hearing/Decision: **21.05.2018**

FINAL ORDER No**.** **41555/2018**

The miscellaneous application for change of cause title has been filed by the Revenue due to change in the jurisdiction of the appellant and change in address of the respondent. The present jurisdiction and address of the respondent is as follows:-

> The Principal Commissioner of GST & Central Excise,
> Chennai-North Commissionerrate,
> 26/1, Mahatma Gandhi Road,
> Nungambakkam, Chennai 600 034"

Accordingly, the miscellaneous application for change of cause title is allowed and the jurisdiction and address of the respondent is changed from CST Chennai-I to The Commissioner of GST & Central Excise, Chennai North Commissionerate.

2.1 The appellant in this case is an individual, providing taxable service under the category of "Renting of Immovable Property". The dispute in the case on hand relates to the period from April 2012 to March 2013 and April 2013 to March 2014.

2.2 Undisputed facts are that the appellant had received rental income; that there was a liability of service tax of Rs. 7,11,745/- for the period in dispute and that on being pointed out by the audit officers, the appellant remitted service tax of Rs. 5,48,664/- on two different dates.

2.3. The Revenue issued a SCN dated 17.09.2014 proposing to demand service tax of Rs.7,11,745/- along with interest under Section 75 and penalties under Section 76 & 77 of the Finance Act, 1994. The appellant-assessee chose not to reply to the SCN and it is a matter of record that the appellant did not avail the personal hearing for the reasons given in the OIO. The adjudicating authority thereafter proceeded to pass the order on merits vide OIO dated 12.05.2015. The adjudicating authority confirmed the demand as also the interest and penalties as proposed in the SCN. The appellant having not met with success in his first appeal before the Commissioner of Central Excise (Appeals-I), is before this forum.

3. The main grievance of the appellant with regard to the demand of interest is that the computation made by the adjudicating authority is incorrect which should have been as per the computation provided before this forum. The Ld. AR on the other hand was fair enough to accept that this could be verified by the adjudicating authority.

4. Based on the submissions of both parties as above, the issue with regard to the interest is set aside to the file of the adjudicating authority who is to verify the computation as provided by the appellant and if the same is in accordance with law, then the same is required to be demanded, if the appellant has not paid so far.

5. The next ground relates to imposition of penalty under Section 76 & 77 of the Act. It is the case of the appellant that the appellant had paid the service tax before the issuance of SCN, to an extent of Rs. 5,47,713/- and a small portion of Rs. 1,64,031/- was paid after a gap of about a month after the date of SCN. It is the further case that both the Sections ie 76 & 77 are governed by the provisions of Section 80 and he therefore pleads that he has established a reasonable cause and therefore the penalty under both the Sections be set aside. The Ld. Counsel appearing for the appellant also submits that it is the undisputed fact that the appellant has paid merely 80% of the tax amount before issuance

of SCN and that he had not collected the service tax element from his tenants, which fact, according to him, has remained un-controverted. It is also his contention that the service tax paid before the SCN covers service tax for three quarters and if at all, it was the tax for the last quarter alone that was paid after the issuance of SCN for which even the interest was also paid by him. In support of his contention, the appellant has furnished ledger copy to prove his bonafides as regards his contention that he had not collected service tax from his tenant. The appellant also relies on the orders of the Ahmedabad Bench and Mumbai Bench of the Tribunal in the cases of *M/s. Avas Engineers Vs. CCE, Ahmedabad* – 2013-TIOL-751-CESTAT-AHM, *M/s. Chandresh Shantilal Shal & 3 Ors. Vs. CCE & ST, Vadodara* – 2014-TIOL-196-CESTAT-AHM and *M/s. Arvind Processors Pvt. Ltd. Vs. CCE & ST, Kolhapur* – 2015-TIOL-2398-CESTAT-MUM.

6. On the other hand, Ld. AR vehemently contended that when there is a glaring admission of liability, the penalty has to follow and also has drawn support from the findings given by the lower authorities.

7. I have considered the rival contentions. The Revenue has nowhere suspected bonafides of the appellant in not remitting the service tax. Section 80 makes it very clear that the penalty under Section 76 & 77 is not automatic, which definitely overrides both the provisions of Section 76 as well as Section 77. It is also not in dispute that the appellant had paid nearly 80% of the tax amount

before the issuance of SCN. I am therefore satisfied that the appellant had made out a case and that it is a fit case to invoke the provisions of Section 80 especially in view of the fact that the appellant has not contested the service tax liability and interest thereon. I therefore set aside the penalties imposed by the adjudicating authority which was confirmed by the Commissioner (Appeals). The appeal is disposed of as indicated above.

(Operative part of the Order pronounced in the open Court)

(P. DINESHA)
MEMBER (JUDICIAL)

BB