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

Appeal No. ST/40391/2018

(Arising out of Order-in-Appeal No.172/2017 (CTA-I) dated 25.9.2017 passed by the Commissioner of Central Excise (Appeals – I), Chennai)

M/s. Mother Industrial Services — Appellant

Vs.

CCE, Puducherry — Respondent

Appearance

Shri P. Kulasekaran, Advocate for the Appellant
Shri Arjun Raghavendar, DC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing / Decision: **11.06.2018**

Final Order No. **41765 / 2018**

Brief facts are that the appellants are providers of taxable services of manpower recruitment agency. During verification of records for the period April 2012 to September 2012, it was seen that they have not paid service tax to the tune of Rs.7,57,262/-. Show cause notice dated 11.3.2014 was issued proposing to demand the above service tax along with interest and for imposing penalties. After due process of law, the original authority confirmed the entire demand and imposed penalty of Rs.3,78,631/- under section 78 of Finance Act, 1994 and penalty of Rs.10,000/- under section 77 of the said Act. In appeal, Commissioner (Appeals) considering the plea of the appellant to grant abatement under Notification 30/2012-ST dated 20.6.202, remanded the matter for requantification of the service tax demand after granting eligible abatement of 75% and also for revising the penalties. The appellant approached the Tribunal by filing Appeal No. ST/41337/2016 against such order. The Tribunal vide Final Order No. 42346/2016 dated 29.11.2016 observed that the Commissioner (Appeals) has only directed for requantification of the tax liability and penalty and therefore dismissed the appeal as devoid of merit. In denovo adjudication, the original authority after giving the abatement confirmed an amount of Rs.5,76,382/- and imposed penalty under section 78 to the tune of Rs.2,88,191/-. In appeal, Commissioner (Appeals) upheld the order of the lower authority. Hence this appeal.

2. The ld. counsel Shri P. Kulasekaran submitted that in the earlier proceedings, the appellant had deposited 25% of the penalty to the tune of Rs.1,89,316/-. The adjudicating authority failed to adjust the penalty in the denovo proceedings. Further, that there was a delay of 4 days in paying interest of Rs.1,49,846/-. He submitted that the appellant may be given the benefit of paying 25% of the penalty to the tune of Rs.1,44,096/-.

3. The ld. AR Shri Arjun Raghavendar submitted that in the earlier final order, the Tribunal had observed that the Commissioner (Appeals) has only remanded for re-computation of tax liability and penalty and therefore the appellant cannot put forward the plea to set aside the penalty.

4. Heard both sides.

5. The ld. counsel had put forward argument to set aside the penalty invoking Section 80 of the Finance Act, 1994. However, taking note of the argument put forward by the ld. counsel, he has pleaded to give the benefit of reduced penalty under proviso 3 to Section78. I find that the said request for confining the penalty to 25% of the service tax demand is reasonable when taking note of the fact that the appellant has deposited 25% of the penalty to the tune of Rs.1,89,316/- in the earlier round of adjudication, which in denovo proceedings could have been adjusted towards the interest liability. Instead the appellant has been asked to deposit the interest (revised amount) and 25% of reduced penalty by the adjudicating authority. This was indeed burdening of the assessee who has opted to pay up the amount.

6. In the result, the impugned order is modified to the extent of granting the appellant the benefit of reduced penalty to the tune of Rs.1,44,096/-. The remaining part of the order is not disturbed. The appeal is partly allowed in the above terms.

(Operative portion of the order was
pronounced in open court)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex