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

**ST/154/2012**

(Arising out of Order-in-Appeal No. 56/2011 STax (SLM) dated 15.02.2011 passed by the Commissioner of Central Excise & Service Tax (Appeals), Salem).

Shri K. Moorthy : Appellant

Vs.

CCE & ST, Salem : Respondent

Appearance

Shri B. Balagopal, Consultant,
for the Appellant

Shri K.P. Muralidharan, Ac (AR)
for the Respondents.

**CORAM :**

**Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)**
**Hon'ble Shri P. Dinesha, Member (Judicial)**

Date of Hearing/Decision: **04.07.2018**

FINAL ORDER No**. 41994 /2018**

**Per Madhu Mohan Damodhar**

Appellants were supplying man power to M/s. ITC Ltd. They were required to discharge the service tax liability under the category of "Man Power Recruitment or Supply Service". However, it emerged from the records that the appellants had not paid the service tax liability of Rs. 4,79,636/- on the gross amount of Rs. 46,56,658/- collected by them during the period April 2009 to September 2009, within the prescribed dates for such payment but was paid belatedly, though with interest thereon. Proceedings initiated against the appellant culminated in an adjudication order dated 22.03.2011 confirming the demand of the said tax liability with interest thereon and imposition of penalties under Sections 76 and 77 of the Finance Act, 1994. Appeal against this order was rejected by the lower appellate authority vide the impugned order dated 15.12.2011. Appellants are before this forum only on the issue of imposition of penalty.

2. Today, when the matter came up for hearing, on behalf of the appellant, Ld. Consultant Shri B. Balagopal submits that due to the adverse financial hardship of the appellants, they were not able to remit the tax liability within the prescribed date, however, they have paid up the entire tax liability along with interest thereon before the issue of the adjudication order, which has been taken note of by both the authorities below. For these reasons, he submits that the penalties imposed may be set aside.

3. On the other hand, Ld. AR Shri K.P. Muralidharan, supports the impugned order.

4. Heard both sides and have gone through the facts.

5.1 We find it is not the case where the appellant's had not discharged the tax liability at all. From the facts on record, it is seen that the appellants discharged the tax liability, though belatedly, along with interest thereon. In our view, the reasons of bad financial health put forth by the Ld. Consultant can be considered as the reasonable cause for their failure to discharge the tax liability in time.

5.2 Following the same, we hold that the provisions of Section 80 can be invoked in this case and penalties imposed under Sections 76 & 77 of the Act are therefore set aside. However, we do not interfere with the late fee of Rs. 2000/- imposed under Rule 7C of the Service Tax Rules, 1994 for belated filing of the ST3 Returns. It is also made clear that no interference is made against the demand of Rs. 4,79,636/- confirmed by the original authority and upheld by the lower appellate authority.

6. Appeal is partly allowed on above terms.

(Order dictated and pronounced in the open Court)

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| (P.DINESHA)<br>MEMBER (JUDICIAL) | (MADHU MOHAN DAMODHAR)<br>MEMBER (TECHNICAL) |

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