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

Appeal Nos. ST/436 & 437/2011

(Arising out of Order-in-Appeal No.29/2011 dated 29.4.2011 and Order-in-Appeal No. 38/2011 dated 18.5.2011 both passed by the Commissioner of Central Excise (Appeals), Salem)

M/s. Cauvery Stones Impex Pvt. Ltd. Appellant

Vs.

Commissioner of GST & Central Excise
Salem Respondent

Appearance

Ms. Krithika Jaganathan, Advocate for the Appellant
Shri S. Govindarajan, 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: **05.09.2018**

Final Order Nos. **42348-42349 / 2018**

Per Bench

After hearing both sides, we find that the issue in dispute pertains to service tax liability of commission paid by appellant to agents abroad for securing orders. The proceedings had been initiated by two show cause notices dated 18.6.2011 which culminated in demand of Rs.2,18,666/- with interest thereon and imposition of penalties under sections 76 and 77 of the Finance Act, 1994. Another show cause notice dated 12.8.2010 culminated in demand of Rs.2,15,312/- with interest thereon and also imposed penalties under section 76 and 77 of the Act ibid. The appellants have filed Appeal Nos. ST/436 and 437/2011 respectively against the impugned orders.

2. At the outset, the ld. counsel Ms. Krithika Jaganathan submits that they are not contesting on merit but only for waiver of penalties imposed. She submits that the appellants were under bonafide belief that they are not required to discharge service tax liability under reverse charge basis in respect of the commissions paid by them. She also submits that there were number of litigations on the issue and it was settled only by the decision of the Larger Bench of the Tribunal in the case of Hindustan Zinc Ltd. Vs. Commissioner of Central Excise, Jaipur – 2008 (11) STR 338 (Tri. LB) that on similar issue it was held that there would be service tax liability on such commissions paid. The ld. counsel also relied upon the recent decisions of the Tribunal in Adarsh Agency Vs. Commissioner of Central Excise, Nagpur – 2017 (6) GSTL 157 (Tri. Mum.) and Shree Ranie Gums & Chemicals Pvt. Ltd. Vs. Commissioner of Central Excise, Jaipur – 2017 (4) GSTL 340 (Tri. Del.).

3. On the other hand, ld. AR Shri S.Govindarajan supports the impugned order.

4. Heard both sides.

5. Discernibly, the identical issue in dispute was very much mired in litigation till the matter was settled by the Larger Bench of the Tribunal and by the Hon'ble Supreme Court in Commissioner Vs. Fifth Avenue – 2016 (44) STR J283 (SC). This being so, we find that there is genuine cause for confusion. We also note that the appellants have paid 50% of the tax liability. Considering these mitigating situations, we hold that there was reasonable cause for the failure to discharge the tax liability and hence the penalties imposed under section 76 and 77 in both the appeals are set aside. So ordered.

6. In the result, the impugned order is modified only to the extent of setting the penalties imposed under section 76 and77 of the Finance Act without disturbing the rest of the order. The appeals are partly allowed in the above terms.

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

(**Madhu Mohan Damodhar**)
Member (Technical)

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

Rex