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

Appeal No. ST/99/2012

(Arising out of Order-in-Original No. 22/2011 (C) dated 16.11.2011 passed by the Commissioner of Central Excise, Puducherry)

Commissioner of GST & Central Excise
Puducherry Appellant

Vs.

M/s. Magic Hour Films India Pvt. Ltd. Respondent

Appearance

Shri K. Veerabhadra Reddy, ADC (AR) for the Appellant
None 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: **22.11.2018**

Final Order No. **43016 / 2018**

Per Bench

Brief facts are that the respondents are engaged in providing taxable services like advertising agency service, photography service etc. and are registered with the department. Based on intelligence that the respondents have delayed in paying service tax, investigations were conducted. They had provided taxable service to Volkswagen and other customers during the year 2010 – 11 and they collected the service tax but not filed returns or paid the service tax. Show cause notice dated 21.6.2011 was issued proposing to demand service tax along with interest and for imposing penalties. After due process of law, the Commissioner of Central Excise confirmed the demand and interest and appropriated the amount already paid by the appellant but, however, waived the penalties. Aggrieved against non-imposition of penalties, the department has filed the present appeal.

2. On behalf of the department, ld. AR Shri K. Veerabhadra Reddy submitted that the respondents had paid the service tax only after interference from the department. There was much delay in paying the service tax and therefore the Commissioner ought not have to waived the penalties.

3. None appeared for the respondent though repeated notices were issued to them.

4. After hearing the ld. AR for the department and after perusal of the records, the appeal is taken up for disposal.

5. It is seen that the respondent has paid up the entire service tax along with interest of Rs.4,52,248/- under GAR challans dated 20.3.2011, 23.3.2011 and 28.3.2011. The show cause notice is issued much later that is on 21.6.2011. It is seen that the respondent has discharged the entire service tax liability along with interest before issuance of the show cause notice. As per sub-section (3) of Section 73, as it stood during the relevant period, no penalty can be imposed when the

demand of service tax along with interest stands paid before issuance of show cause notice. The respondents have also explained the reason for delay in paying the service tax. It is discussed in para 10 of the impugned order that the delay occurred due to the delay in receiving amounts from the clients and also because they were not able to ascertain the input credits in order to arrive at the exact service tax amount payable by them; that a single person was looking of the entire affairs and it is also created much hardship in accounting. It is seen that the accountant engaged had left the firm as it was proved that he is unreliable and mischievous. The respondent had paid the amount within 10 days of the department having intimated with regard to the short-payment of tax. All these would go to show that the Commissioner has rightly invoked section 80 to waive the penalties. The Commissioner has also relied upon various case laws to set aside the penalty as the amounts have been paid before issuance of the show cause notice. We find no ground to interfere with the impugned order. The appeal filed by the department is dismissed.

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

(**Madhu Mohan Damodhar**) Member (Technical)	(**Sulekha Beevi C.S.**) Member (Judicial)

Rex