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

Appeal No. ST/124/2011

(Arising out of Order-in-Appeal No. 208/2010 (MST) dated 26.11.2010 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. P.S. Vinod Appellant

Vs.

Commissioner of GST & Central Excise
Chennai Respondent

Appearance

Shri J. Shankarraman, Advocate for the Appellant
Ms. T. Usha Devi, DC (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: **22.11.2018**

Final Order No. **43020 / 2018**

Per Bench

Brief facts are that during internal audit of the Audit Section, it was noticed that the appellant who is a proprietor of the concern has been rendering photography service as an individual professional photographer. As per Finance Act, 1994, the photography service was brought within the service tax net with effect from 16.7.2001 and the definition of the said services included any professional photographer or any person engaged in the business of rendering service relating to photography. The department was of the view that the appellant has rendered photography service for the period October 2002 to September 2006 and has not discharged the service tax. Show cause notice was issued proposing to demand the service tax along with interest and also for imposition of penalties. After adjudication, the original authority confirmed the demand of Rs.11,41,608/- along with interest and imposed equal penalty, giving the option of reduced penalty. A penalty of Rs.1,000/- was imposed under section 77 of the Finance Act, 1994 also. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, ld. counsel Shri J. Shankar Raman submitted that the appellant is an individual who is doing freelance photography and is not a commercial concern engaged in the business of rendering services relating to photography. Though photography service was brought into service tax net with effect from 16.7.2001, the said act was amended whereby the scope of taxability of photography service was expanded with effect from 1.5.2006 covering any person providing photography service. Prior to 1.5.2006 only professional photographer or a commercial concern providing such service is covered under the definition of photography

studio or agency. The appellant being a person who has only the skill of taking photography cannot be described as a professional photographer or a commercial concern. He used to get orders from various companies and also make advertisement films for such work. He picturises the events for which he gets paid by way of cheque. Since the appellant has no studio and not being an agency, there is no liability to pay service tax. The ld. counsel also argued on the ground of penalty. He submitted that the appellant since was not having any studio and was doing the photography on his own, was under the impression that he is not liable to pay service tax and therefore had not discharged any service tax. It was his bonafide belief that he was not rendering any photography service since he was not rendering from fixed place like a studio. Therefore, he pleaded that the benefit of section 80 may be invoked to set aside the penalties,

3. The ld. AR Ms. T. Usha Devi supported the findings in the impugned order. She submitted that the appellant has collected huge amount as consideration for the photography service. He was engaged in making advertisement film which is a cinematographic film and various other photography services. The contention of the appellant that he does not own a studio and therefore would not come within service tax net cannot be accepted. The appellant is not an amateur

photographer and as being a professional photographer would come within the ambit of the definition of photography service. She therefore submitted that the demand, interest and penalties are legal and proper.

4. Heard both sides.

5. The issue to be considered is whether the activity of the appellant would fall within the photography service. For better appreciation of the issue, relevant sections are reproduced as under:-

> "***Section 65(79) of the Finance Act, 1994***
>
> *Photography Studio or Agency means any professional photographer or a commercial concern engaged in the business of rendering services relating to Photography.*
>
> ***Section 65(105)(zb)***
>
> *The taxable service is a service provided or to be provided to a customer by a photography studio or agency in relation to photography in any manner*
>
> ***Section 65(78)***
>
> *Photography includes still photography, motion picture photography, laser photography, aerial photography or fluorescent photograph"*

6. As seen from the provisions of law extracted above, photography studio or agency means any professional photographer or a commercial concern engaged in the business of rendering service relating to photography. Undisputedly, the appellant is engaged in doing advertisement film and such

other activities. He also renders service in the cinematographic field. A person who renders such service cannot be considered to be an amateur photographer as rightly concluded by the authorities below. Definitely such person who has been receiving such high consideration to the tune of Rs.1,41,18,840/- for the period under dispute would fall into the category of professional photographer. Merely because the appellant does not have a studio or has own industry not registered as commercial concern would not take him out of the ambit of the photography service as he is a professional photographer. We therefore conclude that the demand raised as well as interest is legal and proper. The issue on merits with respect to the demand raised is held against the assessee.

7. The ld. counsel has vehemently argued to waive the penalty imposed under section 78 of the Finance Act, 1994. The authorities below have imposed an equal penalty under section 78 of the Finance Act. There is nothing brought out from evidence that appellant has suppressed facts with intent to evade tax. He has cooperated with the department and has furnished all details. No unaccounted transactions were unearthed. On these facts, the penalty imposed under section 78 is unwarranted. Taking into consideration these facts and that the appellant had entertained a reasonable view as to whether he would fall within the definition of photography

service as he was not having any studio for rendering taxable service and taking into consideration the bonafide belief of the appellant, we are of the considered view that the penalty imposed under section 78 is unwarranted and is set aside by invoking section 80 of the Finance Act, as it stood during the relevant period.

8. From the above discussions, the impugned order is modified to the extent of setting aside the penalty imposed under section 78 only without interfering with the rest of the order. The appeal is partly allowed in the above terms, with consequential relief, if any.

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

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

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

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