

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

Appeal No. ST/42044/2018

(Arising out of Order-in-Appeal No. 163/2018 dated 21.6.2018 passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore)

M/s. Sri Ranojirao Endowment Trust

Appellant

Vs.

Commissioner of GST & Central Excise
Coimbatore

Respondent

Appearance

Shri K. Sankaranarayanan, Advocate for the Appellant
Shri L. Nandakumar, AC (AR) for the Respondent

CORAM

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

Date of Hearing / Decision: **12.12.2018**

Final Order No. **43080 / 2018**

The appellant is aggrieved by the interest and penalties which is upheld in the impugned order.

2. Brief facts are that the appellant, which is a religious trust, had leased out their property for rent. Department was of the view that they are liable to pay service tax on the rent received and show cause notice was issued proposing to demand the service tax for the period January 2013 to September 2013. After due process of law, the original authority confirmed the

demand along with interest and imposed penalties under section 78 as well as under section 77(2) of the Finance Act, 1994. In appeal, Commissioner (Appeals) upheld the demand of interest and penalties. Hence this appeal.

3. On behalf of the appellant, Id. counsel Shri K. Sankara Narayanan appeared and argued the matter. He submitted that the appellant is a Hindu Religious Endowment Trust and was outside the purview of service tax prior to 2012. They did not know after the amendment of Finance Act, 1994 they had to discharge service tax as the said services did not fall within the negative list. The appellant contested the matter on the belief that they have a good case on merits. After receiving the Order-in-Original, they have discharged the entire service tax and he pleaded that the penalties may be set aside. It is argued by the Id. Counsel that the delay in paying the service tax was only due to the bonafide belief that being an entity of the Government and being a religious trust, they are exempted from paying service tax. It is also submitted by him that there is no evidence to establish any fraud or willful suppression of facts on the part of the appellant. Therefore, the penalty imposed under Section 78 is without any factual or legal basis. He relied upon the decision of the Tribunal in the case of Commissioner of Punjai Puliampatthy Municipality & Ors. Vs. Commissioner of Central Excise, Salem vide Final Order No. 42545 to 42548/2018 dated 1.10.2018 to support his argument to set aside the penalties.

4. The Id. AR Shri L. Nandakumar supported the findings in the impugned order.

5. Heard both sides.

6. The appellants have confined their contest in the present appeal with regard to interest and penalties imposed. The Id. counsel has argued that there was delay in dispatch of the Order-in-Original and therefore the demand of interest cannot sustain. This argument is neither tenable nor acceptable. The demand of interest, in my view, is correct and proper and therefore is upheld. However, with regard to the penalty imposed under section 78, it is seen from the impugned order passed by the Commissioner (Appeals) that the appellant had not collected service tax from the tenants and that the matter was remanded by Commissioner (Appeals) to requantify the service tax liability giving cum-tax benefit. Taking note of this fact, it is established that the appellants were under the bonafide belief that they are not liable to pay service tax and were not collecting the service tax from the tenants. Further, there is no evidence to establish that they had suppressed facts with intention to evade payment of service tax. Taking these facts into consideration, I am of the view that the penalty imposed under section 78 cannot sustain and requires to be set aside. The original authority has imposed penalty of Rs.10,000/- under section 77(2) for non-filing of returns within the stipulated period. Since the appellant has later filed the returns

and also paid the service tax and taking into consideration that the appellant is a Government wing, I am of the view that the penalty imposed under section 77(2) cannot sustain and requires to be set aside. The impugned order is modified to the extent of setting aside the penalties imposed under sections 78 and 77(2) without disturbing the remaining portion of the order. The appeal is partly allowed in the above terms with consequential relief, if any.

(Dictated and pronounced in open court)

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

Rex