IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
Court : SM- B3

Appeal No. ST/42368/2018

(Arising out of Order-in-Appeal No. 390/2018 – CTA-I dated 25.07.2018 passed by the Commissioner of GST & CE (Appeals-I) Chennai).

M/s. EID Parry (India) Ltd. : Appellant

Vs.

GST & CE (Chennai North), : Respondent

Appearance

Shri Muthuvenkataraman, Advocate
for the Appellant

Shri L. Nandakumar, AC (AR)
for the Respondent

CORAM :

Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: **16.01.2019**

FINAL ORDER No**.** **40116 /2019**

The dispute relates to the period July, 2014 to February, 2016. By this appeal the assessee is challenging the penalty levied by the adjudicating authority and confirmed in the impugned order by the Commissioner GST & CE (Appeals), under Section 78 of the Finance Act, 1994.

2. Today when the matter came up for hearing, Shri Muthuvenkataraman, Ld. Advocate appearing for the

assessee-appellant submitted that the first appellate authority has dismissed the appeal without going into the merits by holding that the appeal does not merit interference as regards the penalty imposed under Section 78 of the Finance Act, 1994, and thereby upheld the order of the original authority in toto. Ld. Advocate submits that the allegation of suppression of facts is incorrect and the appellant had paid the entire service tax with interest prior to issuance of the show cause notice. He pleads that there is no intention on the part of the appellant to evade payment of tax and hence the penalty imposed is unwarranted. Ld. Advocate relies on the following case laws in support of his contentions:

1. 2012 (26) STR 3 (Kar.)
   CCE & ST, LTU, Bangalore Vs. ADECCO Flexione Workforce Solutions Ltd.

2. 2017 (349)ELT 133 (Mad.)
   CCE, Salem Vs. Madras Auminium Co. Ltd.

3. 2013 (288) ELT 161
   Uniworth Textiles Ltd. Vs. CCE, Raipur.

3. Per contra, Ld. AR opposes the arguments put forth by the Ld. Advocate. He submits that only on verification of documents during audit the material fact had come to the notice of the department and hence allegation suppression of facts made them liable to imposition of penalty under Section 78 of the Act ibid.

4. I have carefully considered the rival submissions and gone through various decisions relied on by the Ld. Advocate.

Section 78 of the Finance Act, 1994 envisages two situations viz. 1. failure to pay service tax and 2. for reasons of fraud, suppression etc. Further, non-payment or short payment of service tax as the case may be is for the reason of fraud or collusion etc. on whom a notice under Section 73 (1) is issued. Essentially, it implies that the Revenue should have reasons before alleging fraud, suppression etc. and secondly the provisions of Section 78 stand controlled by Section 80 of the Finance Act, 1994, ibid. This makes that for every default, penalty under Section 78 is not automatic.

4.2 In the case on hand, much before the issuance of show cause notice the assessee has paid the taxes along with applicable interest and there is no dispute on this. In the orders of the lower authorities, the Revenue has but for reiterating the wordings in the Section itself, has not gone beyond that to put on record any reasons on the alleged fraud or suppression etc. In the event, I am of the considered opinion that the impugned penalty cannot sustain for which reason I set aside the impugned order confirming penalty. Consequently, the penalty is directed to be deleted and the appeal stands allowed.

(Operative part of the Order pronounced in the open Court)

(P.DINESHA)
MEMBER (JUDICIAL)

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