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

Appeal No. ST/42246/2018

(Arising out of Order-in-Appeal No. 162/2018 dated 21.06.2018 passed by the Commissioner of GST & CE (Appeals) Coimbatore).

M/s. Coimbatore Enterprises
and Holdings Ltd. : Appellant

Vs.

GST & CE, Coimbatore : Respondent

Appearance

Shri A. Gopal Kanakaraj, CA
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**.** **40115/2019**

The dispute relates to the period 01.01.2013 to 30.09.2013. 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 77 and 78 of the Finance Act, 1994.

2. Today when the matter came up for hearing, Shri Gopal Kanakaraj, CA, appearing for the assessee-appellant submitted that the first appellate authority has modified the order of the adjudicating authority to the extent of upholding the invocation of extended period, recovery of late fee and penalties imposed under Section 77 (2) and 78 of the Finance Act, 1994. Ld. Consultant submits that the issue involved in this appeal relates to two returns viz., for the periods 01.01.2013 to 31.03.2013 for non-submission of service tax return electronically and for the period 01.04.2013 to 30.09.2013, appellant voluntarily submitted service tax return electronically, with a delay of 180 days and also paid late filing fee for the delayed filing of returns. Hence, penal action for non-submission of service tax electronically is unwarranted. For belated submission of service tax the appellant remitted applicable late fee. Further, the appellant had paid the entire service tax along with interest well before the receipt of the show cause notice and there is no allegation of service tax having not been paid or has been short levied or short paid, erroneously refunded, by any reason of fraud or collusion or wilful mis-statement or suppression of facts with intent to evade payment of service tax on the part of

the appellant. Hence, except delay in filing service tax electronically, no other contravention of any of the provisions of service tax, for which penal action under Section 78 of the Act ibid is unwarranted. Further, appellant voluntarily paid penalty in addition to tax, interest and late fee, which would establish its bonafide actions. He relies on various Tribunal rulings setting aside penalty under Section 78. He relies on the following case laws in support of his contentions:

1. 2017 (4)GSTL 57 (Tri.-Mum.)
   Raghuvir Motors Agencies PVt. Ltd. Vs. CCE & ST,Aurangabad

2. 2018 (14) GSTL 281 (tri.-Del.)
   R.K. Refreshment & Enterprises (P) Ltd. Vs. CCE, Raipur

3. Per contra, Ld. AR opposes the arguments put forth by the appellant. He submits that after initiation of investigation by the department only the appellant paid the service tax along with interest, late fee and filed ST-3 returns and hence penal action for the act of non-compliance of the provisions of Finance Act on the part of the appellant is mandatory and allegation of suppression of facts made them liable to imposition of penalty under Section 77 (2) and 78 of the Act ibid.

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

Consultant. Section 77 deals with a situation when penalty is leviable for contravention of rules and provisions of the Act for which no penalty is specified in the statute. Admittedly, the appellant had got itself registered and paid service tax with interest and late fee as well and in any case Section 77 stands controlled by Section 80. 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, penalties under Section 77 and 78 are not automatic.

4.2 In the case on hand, much before the issuance of show cause notice the assessee has got itself registered, paid the taxes along with applicable interest and this also is established by the fact that the same is appropriated in the Order-in-Original. In the SCN as well as the orders of the lower authorities, the Revenue has but for reiterating the wordings in the Sections itself, has not gone beyond that to put on record any reasons on the alleged malafides, fraud or suppression, etc. In the event, I am of the considered opinion that the impugned penalties cannot sustain for which reason, I set aside the impugned order confirming penalty. Consequently, the penalties are 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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