IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT III : Division Bench B1]

Appeal No.: ST/42252/2015

[Arising out of Order-in-Appeal No. 170/2015 (STA-II) dated 03.08.2015 passed by the Commissioner of Service Tax (Appeals-II), Chennai]

M/s. Haresh Kishor, **: Appellant**
No. 5, Bishop Wallers Avenue (East),
Mylapore, Chennai – 600 004

Versus

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Chennai North Commissionerate

Appearance:-
Ms. Radhika Chandrasekhar, Advocate
for the Appellant

Shri. B. Balamurugan, AC (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: 21.01.2019

Date of Pronouncement: 24.01.2019

Final Order No. 40159 / 2019

Per Bench :

Brief facts are that the appellant is engaged in providing Renting of Immovable Property Services. During Internal Audit, it was noticed that appellant had not discharged service tax on the entire income of rent. Show Cause Notice was issued proposing to demand service tax along with interest and also for imposing penalties. After due process of law, the Original Authority confirmed the demand, interest, appropriated the amount already paid by the appellant and also imposed penalties. Aggrieved, the appellant filed appeal before the Commissioner (Appeals) who modified the impugned Order, upholding the demand of Rs. 2,91,167/- and set aside the penalties in respect of the service tax paid before 28.05.2012 and sustained the penalty in relation to the service tax of Rs. 52,932/- which remained unpaid by them. Aggrieved by such Order, the appellant is now before the Tribunal.

2.1 On behalf of the appellant, Ld. Counsel Ms. Radhika Chandrasekhar appeared and argued the matter. She submitted that the Original Authority had confirmed an amount of Rs. 2,91,167/-. The appellant had in fact paid up the entire service tax liability which was, however, not considered by the authorities below. Rs. 52,932/- was already paid by the appellant whereas the same has not been taken note of by the authorities below holding that the appellant has not produced the challan copy. She prayed that the matter may be remanded to the adjudicating authority since the appellant will be able to furnish proof of payment of service tax to the tune of Rs. 52,932/-.

2.2 Ld. Counsel also argued that the appellant has paid the entire amount demanded in the Show Cause Notice within a period of six months as provided under Section 80(2) of the Finance Act, 1994 and had submitted the challan copies of payment. Section 80(2) ibid was introduced vide the Finance Act, 2012 to waive penalty for taxpayers who pay the service tax due on Renting of Immovable Property Service along with interest within the time prescribed therein. The appellant having paid the service tax within six months, the imposition of penalties may be waived.

3. Ld. AR Shri. B. Balamurugan appearing on behalf of the respondent supported the findings in the impugned Order. He argued that the appellant had not furnished the necessary documents to prove the payment of service tax of Rs. 52,932/-. The appellant not having discharged the entire demand, the penalties imposed are legal and proper.

4. Heard both sides.

5.1 The plea put forward by the Ld. Counsel for the appellant is that the authorities below have not taken into consideration the payment made by the appellant with respect to Rs. 52,932/-. We therefore find it necessary to remand the matter to the adjudicating authority who shall look into the issue whether the appellant has discharged the service tax of Rs. 52,932/-.

5.2 The appellant has also prayed to waive the penalty. The Finance Act, 2012 introduced Sub-Section 2 of Section 80 in order to waive penalties in cases where service tax on Renting of Immovable Property was paid within the prescribed time. The issue whether Renting of Immovable Property is subject to levy of service tax was contentious for a long time. There were several litigations pending before various High Courts. Being an interpretational issue and also taking into consideration the fact that the appellants have discharged a substantial portion of the service tax liability, we are of the opinion that this is a fit case to invoke Section 80 of the Finance Act, 1994. We therefore set aside the penalties imposed entirely.

6. The impugned Order is modified to the extent of setting aside the penalties imposed and also remanding the matter to the adjudicating authority for the limited purpose of re-quantification of the service tax demand after looking into the aspect whether the appellant has discharged the amount of Rs. 52,932/- towards the said liability.

7. The appeal is partly allowed and partly remanded in above terms with consequential reliefs, if any, as per law.

(Pronounced in open court on ***24.01.2019****)*

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial

Sdd