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

Appeal No.: ST/401/2012

[Arising out of Order-in-Appeal No. 71/2012 dated 27.03.2012 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore]

M/s. P. V. George, **: Appellant**
No. 17/46, Mill Road,
Coimbatore – 641 001

Versus

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

Appearance:-
Shri. S. Ramachandran, Consultant
for the Appellant

Shri. K. Veerabhadra Reddy, ADC (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: **31.01.2019**

Final Order No. 40216 / 2019

Per Bench :

Brief facts are that the appellants are a partnership firm dealing with the trading of Articles of Iron and Steel. While procuring goods to their firm, they paid freight charges for the services under Goods Transport Agency (GTA) availed by them.

2. On verification of records, it was noticed by the Department that the appellants had not discharged the proper service tax for the said services for the period from 01.01.2005 to 30.09.2007. A Show Cause Notice was issued proposing to demand the duty of Rs. 1,47,868/- along with interest and for imposing penalties. After due process of law, the Original Authority confirmed the demand of Rs. 1,32,726/- after giving the appellant the cum-tax benefit. Equal penalty was also imposed. Aggrieved, the appellants approached the Commissioner (Appeals), who, vide Order impugned herein, upheld the same. Hence, this appeal.

3. On behalf of the appellant, Ld. Consultant Shri. S. Ramachandran submitted that although the appellant had put forward the plea of small consignment relief under Notification No. 34/2004 as well as of 75% abatement under Notification No. 01/2006-ST dated 01.03.2006, the authorities below have not granted the said reliefs; only the cum-tax plea was considered by the adjudicating authority. He submitted that due to the lapse of time, the appellant has not been able to trace the documents. That during the relevant period, there was much confusion as to the payment of service tax liability with regard to GTA Services in the case of small consignment operators and therefore, the appellant had not

discharged the service tax. He prayed that the penalties may be set aside.

4. On the other hand, Ld. AR Shri. K. Veerabhadra Reddy, appearing on behalf of the respondent, supported the findings in the impugned Order.

5. After hearing the submissions made by both side, we find that the appellant has confined the dispute to the penalty imposed under Sections 77 and 78 of the Finance Act, 1994.

6. It is submitted by Ld. Consultant for the appellant that a substantial amount of the service tax liability has been discharged by the appellant. During the relevant period, many amendments had been brought forth in the levy of service tax with regard to GTA Services and several Notifications were also issued. The appellant's contention that they were under the *bona fide* belief that they will come within the small consignment sections can therefore be accepted. Taking note of this fact, we invoke Section 80 of the Finance Act, 1994 to set aside the penalties imposed under Sections 77 and 78 of the Act ibid.

7. From the discussions made hereinabove, the impugned Order is modified to the extent of setting aside the penalties imposed

under Sections 77 and 78 of the Finance Act, 1994 without disturbing the demand or interest thereon.

8. The appeal is partly allowed in above terms.

(Dictated and pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

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

Sdd