IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
Court : DB- B1

ST/659/2012

(Arising out of Order-in-Appeal No. 189/2012 dated 04.09.2012 passed by the Commissioner of Central Excise, Madurai)

Mr. Dorai Pandimanickam : Appellant

Vs.

CCE & ST, Madurai : Respondent

Appearance
Shri M.N. Bharathi, Advocate
Ms. Kanthi Visalakshi, Advocate
for the Appellant

Shri S. Govindarajan, AC (AR)
for the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: **07.02.2019**

FINAL ORDER No**. 40271/2019**

Per Madhu Mohan Damodhar

The appellant was engaged in providing services under the category of 'Manpower Recruitment or Supply Agency Service" to M/s. Sakthi Sugars Ltd., Sivagangai. The appellant was also providing such Manpower Recruitment or Supply Agency Service to M/s. Sakthi Sugars Ltd., Soya Division, Pollachi and M/s. TNPL, Karur, for which they had obtained registration certificate from the department. However, it emerged that the appellants had not taken registration with reference to Sivagangai operations and had not discharged service tax liability on the services provided. In the statement dated 30.05.2008 and 11.05.2008, appellant informed that he was supplying workers on the basis of 'labour days'; that he distributed the wages to the labourers on fortnightly basis; that he got registered himself with the department on 29.07.2008 for Sivagangai operations and that he had pad up service tax to the tune of Rs. 33,75,747/- and interest of Rs. 4,24,443/- on 27/28.05.2008. Further a statement was filed by the appellant informing that he has paid up an amount of Rs. 3,73,731/- on 07.07.2008. Remaining amount of Rs. 3,78,280/- was not paid by the appellant on the ground that it relates to reimbursement given by M/s. Shakti Sugars Ltd. In proceedings initiated against the appellant was culminated in Order of the adjudicating authority dated 03.10.2011, wherein demand of Rs. 45,06,956/- with interest thereon was confirmed, equal penalty imposed under Section 78 of the Finance Act, 1994 and also penalty imposed under Section 77 ibid and service tax amount already paid up by the appellant was appropriated. In appeal, the Commissioner (Appeals) vide impugned order dated04.09.2012 upheld the order of the original authority. Hence this appeal.

2.1 Today when the matter came up for hearing, on behalf of the appellant, Ld. Advocate Ms. Kanthi Visalakshi submits that except for an amount of Rs. 3,78,280/- relating to tax demanded on reimbursements, they had paid a total amount of Rs. 41,28,676/- out of the total demand of Rs. 45,06,956/- even before the issue of SCN dated 07.10.2010 and differential service tax of an amount of Rs. 3,79,198/- was paid on 09.11.2011 after the issue of adjudication order. She submits that the appellant was also providing manpower supply services from Erode unit to another M/s. Shakti Sugars Ld. Pollachi. In respect of a similar dispute which had arisen for that unit in appeal before the Commissioner (Appeals) had set aside the penalties on the ground that it was a clear case for closure under Section 73(3) of the Finance Act, 1994, as the tax liabilities had already been paid up by the appellant. She submits that the appeal filed against this order by the department was dismissed by the Tribunal vide Final Order No.43431/2017 dated 22.12.2017, where it was noted that the tax dispute which was admitted by the appellant, even if it covers more than the normal period of limitation, cannot attract automatically a penal provision without a specific provision regarding existence of elements of fraud, mis-statement etc.

2.2 In respect of amount of Rs. 3,78,280/-, Ld. Advocate submits that the same is not sustainable since it relates to the expenses borne by the appellant which was subsequently reimbursed by M/s. Shakti Sugars, in view of the judgment of the Hon'ble Apex court in *UOI Vs. Intercontinental Consultants and Technocrats Pvt. Ltd.* reported in 2018 (10) GSTL 401 (S.C.), there cannot be any service tax liability on the appellant in respect of such reimbursable expenses. She submits that she will be able to provide documentary evidence in respect of reimbursable expenses, if the matter is remanded to the adjudicating authority.

3. On the other hand, Ld. AR drew our attention to para-25 of the adjudication order to point out that but for the visit of the officers non-payment of service tax in respect of services rendered to M/s. Shakti Sugars, Sivagangai unit would not have come to light. Hence, this is a clear case of suppression of facts and equal penalty under Section 78 is very much in order. On the plea of Ld. Advocate concerning reimbursable expenses, Ld. AR submits that no documentary proof has been submitted by the appellant at any stage of adjudication before both the authorities to justify its claim.

4.1 Notwithstanding the assertions of the Ld. AR, we find that the appellant had not discharged its service tax liability initially even for the Erode Unit and they had only paid up the amount when the same was pointed out by the department. In that case, penalty under Section 78 was set aside by the

Commissioner (Appeals), which was upheld by the Tribunal in Final Order dated22.12.2017 relied upon by the Ld. Advocate.

4.2 In the present case also, we find that out of the total service tax demand of Rs. 45,06,956/-, an amount of Rs. 41,28,676/- service tax amount relating to Manpower Recruitment or Supply services was paid up by the appellant before issue of SCN and the remaining amount of Rs. 3,79,198/- was paid after issue of the adjudication order. This being so, we do not find any reason to diverge from the stand taken by this Bench in the earlier Final Order dated 22.12.2017. In the event, we hold that there will not be any penalty under Section 78 ibid in respect of Manpower Recruitment or Supply services by the appellant.

4.3 Coming to the demand of Rs. 3,78,280/-, Ld. Advocate submits that the same relates to reimbursable expenses which was reimbursed by M/s. Shakti Sugars. However, no proof has been put forth at the adjudication stage or before the lower appellate authority to substantiate their claim. For these reasons, the issue relating to the demand of Rs. 3,78,280/- is remanded to the adjudicating authority, to enable the appellant to produce the necessary documentary evidence and to prove that the same relates to expenses which were reimbursed by M/s. Shakti Sugars. In such denovo adjudication, the adjudicating authority shall also keep in mind the judgment of the Hon'ble Apex court in

Intercontinental Consultants and Technocrats Pvt. Ltd. (supra). However, considering that the issue relating to reimbursable expenses was mired in litigation for quite sometime till the Hon'ble Apex Court settled the dispute in *Intercontinental Consultants and Technocrats Pvt. Ltd.,* there shall not be any penalty in the matter.

4.4 To sum up:-

a) No interference is made with the demand of service tax relating to Manpower Recruitment and Supply Services amounting to Rs. 41,28,676/- with interest thereon.

b) The issue in regard to the disputed amount of Rs.3,78,280/- claimed to be relating to reimbursable expenses is remanded to the adjudicating authority as per the directions given in paragraph-4.3 above.

c) Penalty of Rs. 45,00,959/- imposed under Section 78 of the Finance Act, 1994 by the adjudicating authority and upheld in the impugned order is set aside.

d) Penalty under Section 77 ibid is upheld.

5. Appeal is allowed on the above terms.

(Order dictated and pronounced in the open Court)

(P.DINESHA) MEMBER (JUDICIAL)	(MADHU MOHAN DAMODHAR) MEMBER (TECHNICAL)

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