

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI**

Appeal No.ST/490/2011

[Arising out of Order-in-Original No.15/2011 dt. 03.06.2011 passed by
Commissioner of Central Excise, Chennai]

Antliaa Event

Appellant

Versus

Commissioner of Service Tax,
Chennai

Respondent

Appearance :

Shri S. Durai Raj, Advocate
For the Appellant

Shri B. Balamurugan, AC (AR)
For the Respondent

CORAM :

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

Date of Hearing : 05.02.2019
Date of Pronouncement : 12.02.2019

FINAL ORDER No. 40289 / 2019

Per Bench

The issue that comes up for decision in this case is whether the penalty imposed under section 78 of the Finance Act, 1994 can be waived in this matter. Briefly stated, the facts are that appellants were engaged in providing Event Management Service during the period 2004-05 to 2008-09 after obtaining the service tax registration. They had raised invoices charging service tax thereon.

Upon investigation, it emerged that the appellants had defaulted in payment of service tax and filing of ST-3 returns; that they had paid service tax in September 2006, but did not file ST-3 returns for the last three years. It further emerged that appellants had paid at various points of time, total amount of Rs.27,49,938/- between October 2005 to October 2007 and Rs.10,30,091/- in September-October 2008. SCN was issued to appellants inter alia proposing recovery of demand of service tax liability of Rs.1,00,54,253/- for the period April 2004 to March 2009 with interest thereon and imposition of penalties under Section 76, 77 & 78 of the Finance Act, 1994. In reply and during the adjudication proceedings, appellants inter alia pointed out that some of the billing related to reimbursable expenses; that amount of Rs.3.24 crores is pending realization from their clients for the period 2004-05 to 2008-09. In adjudication, the Commissioner vide the impugned order dt. 3.6.2011 restricted the demand to Rs.87,83,385/- with interest thereon and imposed penalty of Rs.5000/- under Section 77 ibid and also imposed equal penalty of Rs.87,83,385/- under Section 78 ibid. Hence the appellants have filed this appeal only with respect to imposition of penalty under Section 78 ibid.

2. Today when the matter came up for hearing, on behalf of the appellants Shri S. Durai Raj, Advocate made oral and written submissions which can be broadly summarized as under :-

i) They reiterate that amount of Rs.3.24 crores has not been realized from their customers. However, the Commissioner during the adjudication proceedings verified it with only four customers who informed that the entire amount has been paid to the appellant. Based on this verification, Commissioner

has come to the conclusion that no reliance can be placed on the Chartered Accountant certificate and hence loaded liability of Rs.38,67,980/- over and above the adjudication liability of Rs.76,65,244/-.

ii) The demand of Rs.38,67,980/- has been raised without giving an opportunity to the appellants to defend effectively. So also the reply of the four customers have not been given to the appellants. Therefore the demand is not sustainable.

iii) Although the demand of Rs.38,67,980/- is not sustainable as that pertained to the amount billed but not received, they are not contesting the entire demand of Rs.87,83,385/-. They also submit that major part of the liability has already been accepted and paid by them.

iv) The non-payment of service tax on the above services was only due to financial constraint.

v) The invoices were issued in respect of all the billings and in which case, no suppression or misstatement can be alleged. They rely upon following case laws:

(1) *Steel Cast Ltd. Vs CCE Bhavnagar* - 2009 (14) STR 129 (Tri-Ahmd.) which was affirmed by Hon'ble High Court of Gujarat as reported in 2011 (21) STR 500 (Guj.)

(2) *CCE Pune III Vs Core Fitness Pvt. Ltd.* – 2017 (4) GSTL 80 (Tri.-Mumbai)

3. On the other hand, Ld. A.R draws our attention to the impugned order and submits that enough opportunity time and again was granted to the appellants to submit additional documents from their clients to substantiate the claim of non-realization of Rs.3.24 crores, however they failed to do so. Further, the random verification from four of such clients clearly indicated that no dues were pending

to the appellants. Adjudicating authority has therefore proved that the assessee's claim of non-realization of Rs.3.24 crores appears to be false and an after thought to evade payment of service tax. Appellants have also not filed any ST-3 returns for three years. He also submits that primary duty is on the assessee to establish reasonable cause for failure of payment of service tax and penalty is imposable even in case of duty and interest voluntarily paid before issuance of SCN. He relies on the Hon'ble Gujarat High Court judgement in the case of *Indsur Global Ltd. Vs Addl. Commr. of Service Tax, Vadodara*.

4. Heard both sides, considered rival contentions.

5. A perusal of the SCN reveals that the visit of revenue intelligence was in 14.08.2008 on which date even a statement of Sri.P.Balachander, one of the partners in the appellant firm, was recorded. It appears that his admissions in his statement are not retracted or even disputed, later on. Even otherwise, there is no dispute regarding the service rendered namely, the Event Management Services, nor is there any dispute that the appellant raised invoices including service tax and even collected the same. The service in question came into statute book effective from 16.08.2002 and the SCN reveals that the appellant failed to discharge tax liability from 01.04.2004 and not even filed its service tax (ST-3) returns from 01.04.2004 to 31.03.2009, the period covered under the SCN. In the above factual background therefore, to argue that there was no justification for invoking extended period of limitation, in our view, is a little too farfetched since, the appellant apparently hid everything, without even bothering to disclose even a bit, by not choosing to file ST-3.

6. Sufficient time was granted even after survey by the Revenue intelligence, even the Id. Commissioner in the impugned order-in-original has fairly tried getting clarifications from the appellant's sundry debtors on account of the appellant's failure to do so. Commissioner has also been fair in extending the cum-tax value benefit despite the above and only quantified the demand thereafter. In spite of all this, the appellant, as admitted even by the Id. Advocate, has not paid the differential duty of Rs.38,88,360/- demanded, which doesn't show their bonafides. The maxim *He who comes into equity must come with clean hand* is quite aptly applicable here.

7. We are not impressed by the arguments of the Id. Counsel for the appellant nor do we find any infirmity in the impugned order and hence we dismiss the appeal.

(order pronounced in court on 12.02.2019)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

gs