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

Appeal No. ST/42721/2018

(Arising out of Order-in-Appeal No. 486/2018 (CTA-I)(P) dated 20.09.2019 passed by the Commissioner of GST & Central Excise (Appeals-1), Chennai).

M/s. Sasi Enterprises : Appellant

Vs.

The Commissioner GST & CCE : Respondent
Pondicherry

Appearance

Shri S. Janakiraman, Advocate,
for the Appellant

Shri M. Jagan Babu, AC (AR)
for the Respondent

CORAM :

Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: **19.02.2019**
Date of pronouncement: **28.02.2019**

FINAL ORDER No**.** **40392/2019**

The assessee has come in appeal only against the interest liability and penalty under Section 78 of the Finance Act, 1994.

2. The appellant is a registered service provider, providing 'Manpower Recruitment/Supply Agency Services'. Entertaining a doubt that on preliminary verification of Third Party Data the appellant's total income did not tally with that declared in its

Balance sheet, as declared in ST-3 Return and as per Form-26AS, a Show Cause Notice (SCN) dated 21.11.2017 was issued thereby proposing the demand of service tax, interest under Section 75 of the Finance Act, 1994, penalty under Section 78 of the Finance Act, 1994 along with late fee under Section 70 of the Finance Act, 1994. Thereafter, Order-in-Original dated 24.04.2018 was passed whereby the service tax demand, interest and penalty were confirmed. The adjudication authority has also charged late fee of Rs. 1,13,100/- under Section 70 as against the proposed late fee of Rs. 40,000/- only, in the SCN. Aggrieved by the above demand, the assessee preferred an Appeal before the Commissioner of GST & CE, (Appeals-I), Chennai, who vide impugned order dated 20.09.2018 partly allowed and partly rejected the appellant's claim while sustaining the late fee charged under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 of Rs.1,13,100/-. Aggrieved, the assessee is in Appeal before this forum.

3. Today when the matter was taken up for hearing, Shri S. Janakiraman, Ld. Advocate appearing for the assessee submitted that the Ld. Commissioner (Appeals) has deleted the tax liability on the reimbursements following the decision of the Hon'ble Supreme Court in the case of *UOI Vs. Intercontinental Consultants and Technocrats Pvt. Ltd.* – 2018 (10) GSTL 401 (S.C.), but, however, there is no quantification

of the final tax liability after excluding such reimbursements. He also submitted that the appellant had made payments towards the tax liability during investigation at the behest of the officers of Rs.1,57,914/-, another payment of Rs. 46,779/- towards interest and Rs.33,100/- towards late fee, which is required to be considered while re-quantifying the shortfall in the interest liability, if any, consequent to the impugned order of the first appellate authority. He also submitted that the quantification of late fee of Rs.1,33,100/- was never a part of the SCN and while drawing my attention to the table at page-2, paragraph-4 of the SCN, he submitted that the difference of late fee as arrived at Rs.40,000/- was correct.

4. Ld. DR, Shri M. Jagan Babu, AC, supported the findings of the lower authorities.

5.1 From the discussions in the Order-in-Original as well as the impugned order, I do not find any explanation by the authorities below on the above argument that the final demand has gone beyond the SCN. It is the settled position of law that such an action is not sustainable and hence, I set aside the re-quantified interest liability over and above the interest demanded in the SCN. Consequently, the adjudicating authority has to see if the payments made towards the above interest after re-quantifying in the light of the deletion of reimbursements by the Commissioner (Appeals) and then proceed to recover the balance, if any, after adjusting all such payments claimed to have been made by the assessee.

5.2 Undoubtedly, the issue vis-à-vis facts of this case involved interpretation which was finally settled and laid to rest by the Hon'ble Supreme Court in the case of *Intercontinental Consultants and Technocrats Pvt. Ltd.* (supra), which has been followed by the Ld. Commissioner (Appeals). Moreover, the appellant has also proved its bonafides when it claimed that it had made payments right from investigation stage itself. Considering the above peculiar facts, I am of the considered opinion that the appellant has made out a case for exercising discretion under Section 80 of the Finance Act, 1994 and hence, I direct the deletion of penalty under Section 78 of the Finance Act, 1994. The addition itself has been set aside by the Commissioner (Appeals) and hence, even on this count, I find that there cannot be any scope for levying penalty under Section 78 of the Finance Act, 1994.

6. Appeal is treated as partly allowed and partly remanded on the above terms.

(Order pronounced in the open Court on **28.02.2019**)

(P.DINESHA)
MEMBER (JUDICIAL)

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