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

Appeal No. ST/599/2012

(Arising out of Order-in-Appeal No. 149/2012 dated 23.7.2012 passed by the Commissioner of Central Excise (Appeals), Trichy)

M/s. SVV Transports Appellant

Vs.

Commissioner of GST & Central Excise, Trichy Respondent

Appearance

Ms. Amrutha Arvind, 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 / Decision: **28.02.2019**

Final Order No. **40393 / 2019**

Per Bench

Brief facts are that the appellants are engaged in providing the services of Site Formation and Clearance, Excavation and Earthmoving and Demolition Services. On scrutiny of records, it was noticed that they provided such services to M/s. Madras Cements Ltd. and received an amount of Rs.16,93,372/- as service tax from October 2009 to January

2010 but did not pay the amount to the Central Government. On such allegation, show cause notice was issued to the appellant proposing to demand service tax along with interest and also for imposing penalties. After due process of law, the original authority confirmed the demand along with interest and appropriated the amount as well as the interest paid by the appellant. However, equal penalty was imposed under section 78 of the Finance Act, 1994. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, ld. counsel Ms. Amrutha Arvind submitted that the appellant had field returns properly reflecting the service tax and there was financial hardship faced by the appellant during the relevant period for which reason they could not pay the service tax within the prescribed dates. However, they have discharged the service tax along with interest immediately on being pointed out by the department. That such payment along with interest was much before issuance of the show cause notice. She relied upon sub-section (3) of section73 of Finance Act, 1994 to argue that no penalty can be imposed when the service tax is discharged along with interest before issuance of show cause notice as pointed out by officers. To support this argument, she took assistance of the decision of the Hon'ble High Court of Karnataka in the case of Commissioner of Central Excise,

Bangalore Vs. Adecco Flexione Workforce Solutions Ltd. – 2012 (26) STR 3 (Kar.). It was also submitted by her that apart from mere allegation that there is suppression of facts with intention to evade payment of service tax, department has not been able to point out any positive act on the part of the appellant indulging in suppression of facts. There was no intention to evade payment of service tax which is very much clear since the appellant has discharged the service tax along with interest immediately and also had filed periodical returns. She therefore prayed that the penalty imposed under section 78 may be set aside.

3. The ld. AR Shri B. Balamurugan supported the findings in the impugned order. He submitted that this is a case where the appellant has collected the service tax but has not paid up to the Government. Collection of service tax and not paying to the Government itself would indicate that the appellant is guilty of suppression of facts with intent to evade payment of service tax. Therefore, the penalty imposed under section 78 is attracted. He adverted para 5 and 6 of the show cause notice and para 5.2 of the impugned order to support his plea.

4. Heard both sides.

5. The appellant has come before this Tribunal only with the prayer to set aside the penalty imposed under section78 of the Finance Act. From a perusal of the records as well as the

submission so made by both sides, it is clear that the appellant has discharged the service tax along with interest before issuance of show cause notice. The same has been appropriated in the adjudication order passed by the adjudicating authority. Sub-section (3) of section 73 says that whenever service tax is paid up along with interest, before issuance of show cause notice, no penalties or in particular no show cause notice has to be issued. The intent of this section is to reduce litigation and also to encourage the appellant to pay up the tax as and when pointed out by the department or coming to notice of the assessee. Thus, it is only intended for voluntary and easy compliance on the part of the assessee. The decision of the Hon'ble High Court of Karnataka in the case of Commissioner of Central Excise, Bangalore Vs. Adecco Flexione Workforce Solutions Ltd. (supra) has held that when the assessee has paid up the demand of service tax along with interest no show cause notice and in particular no penalty can be imposed. The ld. AR has been at pains to argue that the appellant has not discharged the service tax even though collected by them and therefore it is implied that they have an intention to evade payment of service tax. It is submitted by ld. counsel that they had filed the returns within the due date and due to financial hardship they could not deposit within time. We do not find any suppression on the part of the appellant with intent to evade payment of service tax. Further, as they have discharged the service tax along with interest immediately on being pointed out by the officers, we are of the view that the penalty imposed under section 78 is unwarranted and requires to be set aside which we hereby do. The Tribunal in the case of Onward E Services Ltd. Vs. Commissioner of Service Tax, Mumbai – II – 2019 (21) GSTL 167 (Tri. Mum.) has analyzed a similar situation wherein the penalty under section 78 was set aside. The impugned order is modified to the extent of setting aside the penalty imposed under section 78 of the Finance Act, 1994. The appeal filed for setting aside the penalty is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

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

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