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

Appeal No.ST/41237/2013

[Arising out of Order-in-Original No.02/2013-ST.ADJ dt. 27.02.2013 passed by Commissioner of Central Excise, Salem]

Meenam Engineering Enterprises Appellant

Versus

Commissioner of Central Excise, Salem Respondent

Appearance :

Shri S. Kannappan, Advocate
For the Appellant

Shri S. Govindarajan,
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 : 21.03.2019

FINAL ORDER No. 40583 / 2019

Per Bench

The brief facts of the case are that appellants had registered for providing services under Man Power Recruitment or Supply Agency Service. It appeared that they have not discharged service tax on the entire taxable value for which SCN was issued proposing to demand short paid service tax along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand of Rs.52,87,010/- with interest for the period 01.04.2007 to 31.03.2011. He also imposed penalties under Section 76, 77 & 78 of the Finance Act, 1994. Hence this appeal.

2. On behalf of the appellant, Ld. Advocate Shri S. Kannappan argued the matter. He submits that appellant has paid the entire admitted amount of Rs.47,19,576/- along with interest of Rs.9,15,366/-. He submitted that department has quantified the demand on the basis of the TDS certificate. The said certificate is inclusive of the service tax and therefore demand of Rs.52,87,010/- basing upon the TDS certificates is incorrect. He submitted that there is an excess payment of Rs.5,32,406/-; that taxable value if calculated as per the amounts received excluding the service tax as shown in the TDS certificate the amounts paid by the appellant would be correct. He argued that there was no suppression of facts on the part of the appellants and the delay in paying service tax was only due to the delay in receiving dues from the customers. He requests that a lenient view may be taken and the penalties imposed under Section 76 & 78 may be set aside.

3. Ld. A.R Shri S. Govindarajan supported the findings in the impugned order. He submitted that since the appellant has put forward an incorrect quantification of demand, the same has to be remanded to the adjudicating authority for verification. He submitted that penalties imposed are in order.

4. Heard both sides.

5. At the outset, it is to be stated that appellant does not dispute the taxability of the services. They dispute only the quantum of the demand. Ld. Counsel for appellant has furnished a detailed calculation with regard to admitted tax liability as well as the demand raised in the SCN. It is his contention that the department has quantified the demand on the basis of TDS certificate which is inclusive of the service tax paid by them. On this issue, we are of the considered opinion that the

matter requires to be remanded to the adjudicating authority for the limited purpose of requantifying the demand after considering the plea put forward by the appellants with regard to incorrect calculation.

6. Ld. counsel has also pleaded to set aside penalties imposed under Section 76 & 78 of the Finance Act, 1994. He submits that penalty imposed under Section 77 has already been paid by them. We find that penalty imposed under Section 76 and 78 of the Finance Act, 1994 are mutually exclusive. From perusal of records, we do not find any grounds of suppression with intention to evade payment of service tax. The delay in discharge of service tax is only due to the delay in receiving the amounts from the customers. 7. Taking these aspects into consideration, we are of the considered opinion that the penalty imposed under Section 76 & 78 ibid has to be set aside, which we hereby do. The penalty imposed under Section 77 is retained. So ordered. While arriving at this conclusion, we draw sustenance from the judgement of jurisdictional High Court of Madras in the case of CCE & ST Coimbatore Vs Ganga Medical Centre & Hospitals (P) Ltd. – 2019 (20) G.S.T.L. 216 (Mad.) wherein the Hon'ble Court has upheld the setting aside of penalty when the matter was remanded to the lower authority.

Appeal is partly allowed and partly remanded on above terms.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)
Member (Technical)

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

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