CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. III

Service Tax Appeal No. 624 of 2012

(Arising out of Order-in-Appeal No. 160/2012 dated 30.07.2012 passed by the Commissioner of Customs & Central Excise (Appeals), No. 1, Williams Road, Cantonment, Tiruchirapalli – 620 001)

M/s. Perfect International Fabricators (P) Ltd., **: Appellant**
S.F. No. 322, 10/B, M.R. Palayam,
Sanamangalam (P.O.), Mannachanallur Tk.,
Chennai Bye-Pass Road, Tiruchirapalli – 621 104

VERSUS

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Tiruchirapalli Commissionerate,
No. 1, Williams Road, Cantonment,
Tiruchirapalli – 620 001

APPEARANCE:

Shri. J. Shankaraman, Advocate for the Appellant

Shri. L. Nandakumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

FINAL ORDER NO. 40764 / 2019

DATE OF HEARING: 06.05.2019

DATE OF DECISION: 06.05.2019

Brief facts are that the appellants are registered with the Central Excise Department for the manufacture of dutiable goods. They received inputs on which transportation charges were paid by them and were liable to pay service tax as service recipient under reverse charge basis. A Show Cause Notice was issued to them proposing to demand the service tax along with interest and also for imposing penalties.

2. After due process of law, the Original Authority confirmed the demand, interest and imposed penalty under Section 78 of the Finance Act,

1994. In appeal, the Commissioner (Appeals) vide impugned order dated 30.07.2012 upheld the same. Hence, this appeal.

3. Today when the matter came up for hearing, Ld. Advocate Shri. J. Shankaraman appearing on behalf of the appellant submitted that the appellant has paid up the entire service tax along with interest much before issuance of the Show Cause Notice. The appellants were under a *bona fide* belief that the service provider is liable to pay the service tax and therefore, had not paid up the service tax within the due date. The failure to discharge the service tax was only due to the *bona fide* belief that they, being a service recipient, are not liable to pay service tax. He submitted that the appellants having discharged the entire service tax along with interest, is praying only to set aside the penalty imposed under Section 78 of the Finance Act, 1994.

4. Ld. AR Shri. L. Nandakumar appearing on behalf of the respondent supported the findings in the impugned order. He submitted that the appellant has not paid up the service tax during the relevant period and therefore, the penalties imposed are legal and proper.

5. Heard both sides.

6. On going through the records, it is seen that the appellant has been issued the Show Cause Notice for short payment of service tax under reverse charge basis. They had received inputs for being used in the manufacture of their final products. For such inward transportation of goods, they are liable to pay service tax under reverse charge basis.

7. Ld. Counsel for the appellant has submitted that the appellants were not aware of the fact that they are liable to pay service tax on such freight charges under reverse charge basis. On perusal of the records, it is seen that the appellant has raised this plea from the very beginning itself. The same has not been considered by the authorities below. It is also seen that they have paid up the entire service tax along with interest on being pointed out by the Department much before the issuance of the Show Cause Notice. Taking all these facts into consideration, I am of the view that this is a fit case for invoking Section 80 of the Finance Act, 1994 since the appellants have established reasonable cause for the failure to discharge the service tax.

8. From the foregoing, the impugned order is modified to the extent of setting aside the penalty imposed under Section 78 ibid only without disturbing the demand, interest or appropriation thereof.

9. The appeal is partly allowed on above terms.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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