IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

REGIONAL BENCH - COURT NO. – III

Service Tax Appeal No. 675 of 2012

(Arising out of Order-in-Appeal No. 184/2012 dated 7.9.2012 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore)

M/s. Keas Control System India P. Ltd. Appellant
3rd Floor, Singapore Plaza
333, Cross Cut Road
Gandhipuram, Coimbatore – 641 018.

Vs.

Commissioner of GST & Central Excise Respondent
6/7, ATD Street
Race Course Road
Coimbatore – 641 018.

APPEARANCE:

Shri R. Balagopal, Consultant for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri P. Venkata Subba Rao, Member (Technical)

Final Order No. **40844 / 2019**

Date of Hearing: 14.06.2019
Date of Decision: 14.06.2019

PER BENCH

Brief facts are that the appellants are dealers of gensets. They are also providing free service and warranty service for the gensets sold by them. The manufacturer reimburses the expenses for the free services to the appellant. Apart from this the appellant also collected certain charges in the name of coupon claim. They did not pay service tax on the warranty claims and coupon claim during the period April 2007 to February 2010. During the audit, the said short-payment was noticed and thereafter Show Cause Notice was issued. After adjudication, the original authority confirmed the demand, interest and imposed penalties under sections 76 and78 of the Finance Act, 1994. Aggrieved, the appellant filed appeal before Commissioner (Appeals), who upheld the same. Hence this appeal.

2. On behalf of the appellant, ld. consultant Shri R. Balagopal submitted that on being pointed out by the audit, the appellant had discharged the entire service tax along with interest before passing the adjudication order. It is also pointed out by him that the manufacturer did not reimburse the service tax part but had only reimbursed expenses for the warranty claim. The appellant has thus collected the amount from the customers on cum-tax basis and therefore the appellant ought to have been given the cum-tax benefit. It is also submitted by him that the value of spares and materials ought to have been excluded from the total taxable value. The ld. counsel prayed that the appellant having discharged the entire amount of service tax, penalties may be waived.

3. The ld. AR Shri S. Govindarajan supported the findings in the impugned order.

4. Heard both sides.

5. The appellant has discharged the entire service tax as demanded in the Show Cause Notice. The issue whether the value of spares and materials can be included in the total taxable value was subject matter of litigation during the relevant period. The said value has not been excluded from the total taxable value. It is settled law

that the value of spares and materials cannot be included for demand of service tax. The appellant has also to be given the benefit of cum-tax value. Taking note of the fact that the issue whether value of materials can be included in the total taxable value was under several litigation and also being an interpretation issue, we are of the opinion that the appellant has put reasonable cause for setting aside the penalty. By invoking section 80 of the Finance Act, 1994, the penalties imposed under sections 76 and 78 are set aside. However, to look into the issue of cum-tax benefit as well as the value of the materials / spares included in the total taxable value, the matter is remanded to the adjudicating authority.

6. The impugned order is modified as above. The appeal is partly allowed and partly remanded with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

(**SULEKHA BEEVI C.S.**)
Member (Judicial)

(**P. VENKATA SUBBA RAO**)
Member (Technical)

Rex