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

ST/297/2008

(Arising out of Order-in-Appeal No.34/2008 MST dated 26.8.2008 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. STP Services Pvt. Ltd. — Appellant

Vs.

Commissioner of Service Tax, Chennai — Respondent

Appearance

Shri P. Rajendra Kumar, CA for the Appellant
Shri K.P. Muralidharan, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **09.08.2017**

Final Order No. 41562/2017

Per Bench

The appellants are providing services likes stevedoring, storage, warehousing, steamer agents, transportation, maintenance and repair, clearing and forwarding agent services etc. to various clients. They were also providing port services to various clients prior to July 2001. Though port services became subject to levy of service tax with effect from 16.7.2001, the appellant did not discharge service tax. A show

Customs, Excise & Service Tax Appellate Tribunal cause notice was issued proposing to demand service tax to the tune of Rs.9,80,969/- along with interest and also for imposing penalties. The appellant paid service tax to the tune of Rs.4,00,000/- on port services on 14.10.2005 before issuance of show cause notice. The balance amount was not paid. After due process of law, the original authority confirmed the demand along with interest and also imposed equal penalty under section 78 as well as penalty under section 76. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, learned Chartered Accountant Shri P. Rajendra Kumar submitted that the appellant had outsourced its job to another stevedoring service provider namely M/s. Viking Shipping (Chennai) Pvt. Ltd. (herein after referred to as VSPL). Therefore, the appellant had not provided any services in relation to port services in any manner during the disputed period and the services were rendered by M/s.VSPL and that they have paid appropriate taxes. That when the main contractor has paid the service ax, the appellant cannot be called upon to pay service tax for the same services.

3. The learned counsel also argued on the penalties imposed by contending that they have not discharged service tax

liability for the reason that they were under the impression that the main contractor M/s. VSPL is liable to pay service tax.

4. The learned AR Shri K.P. Muralidharan reiterated the findings in the impugned order.

5. Heard both sides and perused the records.

6. Though the appellant has contended that they did not render any service under the category of stevedoring / port services, it is seen that they have obtained the port license as well as received amount in regard to the said services. The only contention put forward by them is that their main contractor M/s. VSPL is liable to pay the service tax. However, the learned consultant has not produced any agreement showing that the liability to pay service tax is cast upon M/s.VSPL and that appellants are not liable to discharge service tax. When the appellant has received charges from the clients for the rendering of stevedoring services, the appellant is liable to discharge service tax, unless it is established that the counterpart / main contractor has discharged service tax on the very same services. Since no evidence is put forth in this regard, we do not find any ground to interfere with the demand raised in the impugned order. However, taking into consideration that the appellant was under bonafide belief that the main contractor would be liable to discharge the service tax and also taking note of the fact that the said services were

outsourced as brought out from the contention put forward by the appellant, we are of the view that the penalties imposed both under sections 76 and 78 would be harsh as well as unsustainable. Hence the penalty imposed under section 76 is set aside. The impugned order is modified to the extent of setting aside the penalty imposed under section 76 alone without disturbing the rest of the demand.

7. In the result, appeal is partly allowed in the above terms.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

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

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

Rex

Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार/Asst. Registrar
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