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

ST/504/2009

(Arising out of Order-in-Original No. 20/2009 dated 17.6.2009 passed by the Commissioner of Service Tax, Chennai)

M/s. Sign Sites Publicities — Appellant

Vs.

Commissioner of Service Tax, Chennai — Respondent

Appearance

Shri G.Natarajan, Advocate for the Appellant
Shri K.P. Muralidharan, 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: **10.08.2017**

Final Order No. 41647/2017

Per Bench

The appellants were engaged in advertising agency business of designing and setting up of advertisement hoardings. In the year 2005, that there was lot of restrictions as well as erection of holders in public places which caused severe loss of the business to the appellant by which they were not in a position to deposit service tax collected from their customers within time. Even without any departmental

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intervention, the appellant was paying the service tax, albeit belatedly. However, a show cause notice was issued for the periods shown in the Table below which after adjudication confirmed the demand, interest and also imposed penalties as under:-

S. No.	Details of Demand	Service Tax	Penalty	Interest	Remarks
1.	Service tax note paid for the period 4/2005 to 9/2006 and 4/2008 to 9/2008	65,88,244	70,00,000	Appropriate interest payable	Entire ST since paid
2.	Interest demand for delayed payment of service tax during 6/2003 to 6/2005 6/2005; 10/2006 to 3/2008. Total ST paid belatedly Rs.1,22,55,162	No ST demand	8,06,098 u/s 76 Rs.5,000/- u/s 77 for the entire period	8,34,069	Interest of Rs.8,92,916 paid

Hence the appellants are now before the Tribunal.

2. At the time of hearing, the learned counsel Shri G.Natarajan submitted that the appellant is not contesting the liability to pay service tax and is confining the challenge on the penalties imposed. He submitted that the appellant could not pay the service tax only due to the financial hardships caused due to loss of the business. That even without departmental intervention, they were paying the liabilities with delay. He therefore submitted that the ingredients required for imposition of penalty under section78 are absent and also requested for waiver of penalty invoking section 80 of the Finance Act, 1994.

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3. It is also pointed out by learned counsel that there was no proposal to impose penalty under section 78 for the period 4/2005 to 9/2006. But, however, the authorities below imposed the same. Similarly, no penalty under section 78 can be imposed for the period 6/2005 to 10/2006 to 3/2008, the department imposed such penalties which is shown in the Table below as submitted by the counsel for appellant:-

Period	Penalty Imposed	Remarks
6/2003 to 6/2005	Section 76	For the period 4/2005 to 6/2005 on the delayed payment of ST
4/2005 to 9/2006	Section 78	For the period 4/2005 to 6/2005 – for the unpaid ST
10/2006 to 3/2008	Section 76	
4/2008 to 9/2008	Section 78	

4. When the department has not been able to show any fraud, suppression on the part of the appellant to evade service tax and the non-payment was only due to financial hardships.

5. The learned AR Shri K.P. Muralidharan reiterated the findings in the impugned order and strongly argued that the penalties imposed are legal and proper.

6. Heard both sides.

7. Learned counsel has submitted that the appellant is not contesting the liability to pay service tax as well as interest thereon. However, the counsel has adverted to the show cause notice and submitted that for some period, there is no proposal to impose penalty under section 78 but the authorities below

have imposed the same. It is seen that the appellant is making payment of service tax intermittently and it is also pleaded that they were undergoing much financial difficulties due to loss of business. That there was much restriction for putting up hoardings and there were litigations pending even before the Hon'ble Supreme Court on the said issue and that this caused much financial constraints by which they could not deposit the service tax. Taking into consideration the submission made on behalf of the appellant, we are of the view that there is no evidence to establish that there was any suppression of facts and therefore the penalties imposed under sections 76 and 78 are unwarranted and requires to be set aside, which we hereby do.

8. In the result, appeal is partly allowed by setting aside the penalties imposed under sections 76 and 78 without disturbing the confirmation of demand or interest thereon.

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

(Madhu Mohan Damodhar)
Member (Technical)

Sulekha Beevi G

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

Rex

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सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण/(CESTAT)
चेन्नै/Chennai

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