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

Appeal No.ST/40149/2017

[Arising out of Order-in-Appeal No.357/2016 (STA-I) dt. 14.6.2016 passed by the Commissioner of Service Tax (Appeals-I), Chennai]

M/s.Pressmach — Appellant

Versus

Commissioner of Service Tax,
Chennai-I — Respondent

Appearance:

Shri V.Sreenivasan, Advocate
For the Appellant

Shri S. Govindarajan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)

Date of hearing / decision : 27.10.2017

FINAL ORDER No. 42456/2017

The brief facts of the case are that appellants are engaged in providing taxable services under the category of Commercial or Industrial Construction Services, Renting of Immovable Property Services and execution of Work Contract Services. During the course of audit, it was noticed that appellants have not paid service tax of Rs.44,24,401/- on the taxable amount realized from customers. They subsequently paid the service tax along with interest on being pointed out. A show cause notice was issued proposing to recover service tax along with interest and also for imposing penalty. After due process of law, the original authority confirmed the demand, interest and imposed penalty under Section 76 of the Finance Act, 1994. In appeal, the Commissioner (Appeals) upheld the same. Hence appellants are now before the Tribunal.

2. On behalf of appellant, Ld. Advocate Shri V.Sreenivasan submitted that appellant had not evaded payment of service tax but had only belated the payment due to financial hardships. Immediately on being pointed out by the department appellant had paid the entire service tax liability on 4.12.2010 and entire interest liability was paid on 14.2.2011 and thus the liability was discharged much before the issuance of the SCN. Thus appellant is eligible for the benefit of sub-section (3) of Section 73 of the Finance Act which provides that when the appellant discharges the service tax liability on his own ascertainment or on being point out by the department, no show cause notice is to be issued to the appellant. It is also urged by the counsel that the SCN has not been invoked under proviso to sub-

section (1) of Section 73 and there is no allegation of suppression or wilful mis-representation of facts alleged in the SCN. Even in the SCN, the allegation is only ~~on~~ belated payment of service tax. Thus, it is argued that the penalty imposed under Section 76 is unwarranted and pleaded that the same may be set aside.

3. Against this, ld. A.R Shri S. Govindarajan reiterated the findings in the impugned order. He submitted that appellant has collected service tax and not paid to the Government. Further, the SCN is issued under sub-section (1) of Section 73 which is sufficient for invoking the clauses for suppression of facts and willful misstatement. The proviso to sub-section (1) of Section 73 need not be specifically invoked for imposing penalty under Section 76; that even though appellants have discharged the service tax liability with interest prior to issuance of SCN, they are also liable to pay penalty.

4. Heard both sides. It is brought out from the submissions as well as the records that appellants have discharged their liability of service tax along with interest before issuance of the SCN. The entire tax along with interest was paid on 14.2.2011 whereas the SCN has been issued on 4.10.2011. Sub-section (3) to Section 73 provides that when the assessee pays the entire service tax liability on its own volition or on being pointed out by the department, no show cause

notice is to be served on the assessee. This indeed is intended to reduce the litigations so that public money is not wasted in the litigations by Revenue as well as assessee is not drawn up in the cumbersome process of litigation, which is the intention of the Act. On such score, I am of the view that penalty imposed is unjustified. Impugned order to the extent of imposing penalty under Section 76 is set aside without disturbing the demand of service tax and interest thereon which has been already appropriated. Appeal is allowed in the above terms with consequential benefits, if any, as per law.

(dictated and pronounced in court)

Sulekha Beevi

(Sulekha Beevi C.S)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

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