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

Appeal No. ST/42479/2016

[Arising out of Order-in-Appeal No.537/2016 (STA-I) dt. 1.9.2016 passed by the Commissioner of Service Tax (Appeals-I), Chennai]

Kutty Brothers — Appellant

Versus

Principal Commissioner of Service Tax,
Chennai-I — Respondent

Appearance:

Shri S.Sivaramakrishnan, Advocate
For the Appellant

Shri R.Subramaniyam, AC (AR)
For the Respondent

CORAM :

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

Date of hearing / decision : 23.10.2017

FINAL ORDER No. 42458/2017

Brief facts of the case are that the appellant was registered under the Service Tax Department for providing services on "Erection, Commissioning and Installation Services" as well as supply of Tangible Goods Services. During the course of audit, it was noticed that the appellants paid the service tax for the period 2006-2007 and 2009-2010 in respect of "Erection, Commissioning and Installation Services" and short paid service tax for the period 2008-2009 and 2009-2010 in respect of supply of Tangible Goods Services. On being pointed out, the appellants paid the service tax alongwith interest on 25.1.2010. As the appellants failed to pay the service tax within the time, a Show Cause Notice dt.30.9.2011 was issued and after adjudication, confirmed the demand alongwith interest and appropriated the amounts already paid by the appellant. Penalties u/s.77 and 78 were also imposed. Being aggrieved by the penalty imposed, the appellant filed appeal before the Commissioner (Appeals) who vide order impugned herein upheld the same. Hence the appellant is now before the Tribunal.

2. On behalf of the appellant, the Ld.counsel, Shri S.Sivaramakrishnan submitted that the appellants had discharged the service tax liability immediately on being pointed out by the department on 25.1.2011, much before issuance of Show Cause Notice. Therefore as per sub-section (3) of Section 73, no Show Cause Notice should have been issued to the appellant and in any case the penalties imposed are unwarranted. He further submitted that in respect of the said services, the payment was received by the appellant belatedly and due to the huge work force and huge liability of interest charges on private loans, there was a delay in discharging the service tax. The appellant paid the service tax on being pointed out by the department and has only delayed in making payment. He pleaded that the penalty may be set aside.

3. The Ld. AR, Shri.R.Subramaniyam, reiterated the findings in the impugned order.

4. Heard both sides.

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5. At the outset, it has to be stated that the appellants have discharged the service tax liability much before the issuance of the Show Cause Notice. The date of the Show Cause Notice is 30.9.2011, whereas the appellants have been discharged the tax liability on 25.1.2011. Sub-section 3 of Section 73 provides that no Show Cause Notice shall be issued to the assessee when he has discharged the service tax liability on being pointed out by the department or on his un-volition. Though the appellants have raised the said plea before the Commissioner (Appeals), the same has been disregarded stating that the appellant had not paid the service tax on his own volition but has discharged it on being pointed out by the department. This observation is contrary to the law laid in sub-section (3) of Section 73 of the Finance Act, 1994 as well as the ratio laid in the decision of Hon'ble High Court of Karnataka in the case of **Adecco Flexione Workforce Solutions Ltd 2012 (26) STR 3 (Kar.)**

6. Following the same, I am of the view that the penalties imposed are unjustified. The impugned order to the extent of imposing the penalties is set aside and the appeal is partly allowed with consequential reliefs, if any.

(Dictated and pronounced in open court on 23.10.2017)

Sulekha Beevi

(Sulekha Beevi C.S)
Member (Judicial)

vsr

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy

सहायक पंजीकार / Asst. Registrar
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चेन्नै / CHENNAI