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

Appeal No.ST/ROA/40075/2017, ST/41815/2016

[Arising out of Order-in-Appeal No.310/2016 (STA-I) dt.06.06.2016 passed by the Commissioner of Service Tax (Appeals-I), Chennai]

Satyam Dewatering System — Appellant

Versus

Commissioner of Service Tax, Chennai – I — Respondent

Appearance:

Shri Jeethender Kumar, Consultant
For the Appellant

Shri Arul C Durairaj, Superintendent (AR)
For the Respondent

CORAM :

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

Date of hearing / decision : 25.10.2017

FINAL ORDER No. 42459 / 2017

The above ROA has been filed by the appellant seeking to recall the final order passed by the Tribunal dt.7.12.2016.

2. On behalf of the appellant, the Ld.Consultant, Shri.Jeethendar Kumar submitted that the appeal was posted for hearing on 7.12.2016 and the consultant appearing for the appellant could not appear and argue the matter due to personal difficulties. A request for adjournment was sent to the Tribunal dated 29.11.2016 requesting to

adjourn the case. The same was received in the Tribunal on 29.11.2016. In spite of appellant's request for adjournment, the matter was taken up by the Tribunal and an ex-parte order was passed dismissing the appeal. It is also pointed out by the Ld.Consultant that the appellant has paid the entire service tax liability before the issuance of Show Cause Notice and the penalties ought to have been set aside under the provisions of Section 73 (3) of the Finance Act, 1994. He argued that this was an error apparent on the face of record and therefore the impugned final order may be recalled.

2. The Ld.AR, Shri.Arul C Durairaj opposed the ROA application and submitted that there are no grounds for recalling the final order. It was also submitted by him that there is no error apparent on the face of record and therefore the impugned final order does not call for interference.

3. Heard both sides.

4. On perusal of the impugned final order, I am able to see that the same is passed ex-parte on 7.12.2016. The records show that the appellant had filed an intimation requesting for adjournment of the case dt.29.11.2016. It appears that the same had not been placed before the bench and the matter was taken up for hearing and the Tribunal dismissed the appeal. Further, the appellant has paid the entire service tax liability much prior to the issuance of Show Cause Notice. This being so, I am of the view that the appellant has made prima-facie grounds for recall of the final order, since there is an error apparent on the face of the records. I therefore recall the final order dated 7.12.2016.

Customs, Excise & Service Tax Appellate Tribunal

5. Both sides were heard on the merits of the case also as the appeal is of the year 2016 and the Single Member Bench is now hearing appeals of the year 2017. The period involved is April 2010 to September 2010 and on being pointed out by the Department on 23.3.2011, the appellant remitted the entire service tax dues before the issuance of Show Cause Notice dt.21.10.2011. In fact, the service tax dues for 4 months was paid much before the audit and the remaining disputed amount was paid before the issuance of Show Cause Notice. On such score, as per sub section (3) of Section 73 no Show Cause Notice ought to have been issued. The judgement of the Hon.Karnataka High Court in the case of **Adecco Flexione Workforce Solutions Ltd 2012 (26) STR 3 (Kar.)** held that no penalties can be imposed when the disputed amount has been paid by the appellant before the issuance of Show Cause Notice. The said judgement has been applied by the Tribunal in a number of cases. Following the same, I am of the view that penalty imposed under section 78 requires to be set aside which I hereby do. The Ld.Counsel has submitted that he is not contesting the penalty imposed under section 77.

6. In the result, the impugned final order dated 7.12.2016 is recalled and the impugned order in the appeal is modified to the extent of setting aside the penalty imposed under section 78 without

disturbing the confirmation of demand of service tax and interest thereon as well as the penalty imposed under section 77.

7. The appeal is partly allowed in above terms with consequential reliefs, if any. ROA disposed accordingly.

(Dictated and pronounced in open court)

Sulekha Beevi

(Sulekha Beevi C.S)
Member (Judicial)

vsr

प्रमाणित प्रति/Certified True Copy

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Customs, Excise & Service Tax Appellate Tribunal