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

Appeal No. ST/42072/2017

(Arising out of Order-in-Original No. CHN/SVTAX-002-COM-12-2017-18 dated 16.6.2017 passed by the Commissioner of Service Tax – II, Chennai)

M/s. Saajawat & Co. Appellant

Vs.

Commissioner of Service Tax, Chennai – II Respondent

Appearance

Ms. Radhika Chandrasekar, Advocate for the Appellant
Shri Arul C. Durairaj, Superintendent (AR) for the Respondent

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

Date of Hearing / Decision: **26.10.2017**

Final Order No. 42469/2017

Brief facts are that the appellants were engaged in interior designing work for construction projects executed by the builders and also for individual owners of apartments. The department was of the view that such services falling under interior decorator services is leviable to service tax with effect from 1.6.2007 and a show cause notice dated 13.4.2009 was issued for the period June 2007 to September 2008. After adjudication, the original authority confirmed the demand of service tax along with interest and also imposed penalties. Appellant preferred an appeal before the Tribunal and vide Final Order No. 40552/2013 dated 30.9.2013, the Tribunal remanded the matter for re-examination whether the appellant has rendered any service of advice, consultancy etc. After such denovo adjudication, Order-in-Original was passed which is impugned herein whereby the Commissioner has confirmed the demand, interest and also imposed penalty of Rs.11,62,249/- under section 78 of the Finance Act, 1994. Hence this appeal.

2. On behalf of the appellant, ld. counsel Ms. Radhika Chandrasekar submitted that the appellant is contesting only the penalty imposed. She pointed out that there was much confusion with regard to the classification of the services and whether such services would fall under works contract service. Thus, the appellant had failed to discharge the service tax only on the bonafide belief that they are not liable to pay the same. However, the appellant had paid an amount of Rs.7,66,000/- even prior to issuance of show cause notice. The balance amount of Rs.3,95,383/- was paid later. She submitted that though it is alleged by the department that the appellant has suppressed material facts, there is no evidence to establish the same. Apart from vague allegation of suppression, there is no evidence to establish suppression of facts. That the appellant has furnished all details with regard to the quantification of service tax as and when required by the department.

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3. Against this, the ld. AR Shri Arul C. Durairaj submitted that the appellant has discharged the service tax only after passing of the impugned order. That the entire demand of service tax of Rs.11,62,249/- has not been discharged prior to issuance of show cause notice and therefore there can be no legal grounds for setting aside the penalty. Further, the show cause notice has been issued invoking the extended period of limitation and therefore the appellants are guilty of suppression of facts.

4. Heard both sides.

5. On going through the records and also after hearing the submissions made by both sides, I find that the department has not been able to establish any positive act on the part of the appellant to establish willful suppression of facts. It is seen that the appellant has provided all details to the department for quantification of service tax as well as for issuance of show cause notice. Further, the appellant has paid substantial amount of service tax prior to issuance of show cause notice. After passing of the impugned order, the appellant has made the balance payment of service tax which indicates that the appellant had bonafide belief. Further, the appellant had agitated the issue of taxability of services upto the Tribunal by which the Tribunal had remanded the matter for reconsideration of the issue. This indicates that the appellant entertained a bonafide belief that their services are not leviable

to service tax. On such score, I am of the view of that the penalty imposed under section 78 is unwarranted and the same is required to be set aside, which I hereby do. The impugned order is modified to the extent of setting aside the penalty imposed under section 78 alone without disturbing the demand of service tax or interest thereof. The appeal is partly allowed in the above terms.

(Dictated and pronounced in open court)

Sulekha Beevi

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

Rex

Customs, Excise & Service Tax Appellate Tribunal

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