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

Appeal No. ST/458/2011

(Arising out of Order-in-Appeal No.176/2011 dated 27.4.2011 passed by the Commissioner of Central Excise (Appeals), Madurai)

Commissioner of Central Excise, Madurai — Appellant

Vs.

M/s. L.S. Mills Ltd. — Respondent

Appearance

Shri K.P. Muralidharan, AC (AR) for the Appellant
Ms. Cynduaja Crishnan, Advocate for the Respondent

CORAM

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of Hearing / Decision: **22.12.2017**

Final Order No. 43430/2017

Per Smt. Archana Wadhwa

Being aggrieved with the part of the order passed by the Commissioner (Appeals) by which he has set aside the penalty imposed upon the respondent, Revenue has filed the present appeal.

2. We have heard both sides duly represented by Ms. Cynduja Crishnan and Shri K.P. Muralidharan.

3. For setting aside the penalty, the Commissioner (Appeals) has observed as under:-

Customs, Excise & Service Tax Appellate Tribunal

"The fact that the appellant had paid the service tax amount with interest without prejudice to the pending writ petition filed by appellants challenging their liability to service tax clearly shows that their failure to pay service tax was due to the pendency of writ petition which is a reasonable cause for the said failure as is evident from the Final Order No. 329/2011 dated 17.2.2011 of CESTAT, Chennai in an appeal filed by the department with reference to the same appellants on the subject matter of liability to penalty with reference to non-payment of service tax on foreign agents commission relating to the period 8.9.2006 to 2.2.2008. In the said order, it has been stated as below:-

6. I have carefully considered the submission from both sides and perused the records. The respondent is a manufacturer of yarn and are exporting to various countries. The claim of the respondent was that they were registered only for GST services in Jan. 2005 and in respect of Business Auxiliary Services they were registered only in Aug. 2009 subsequent to their dispute having been raised by the department. In the present case, the service tax demand which is not being disputed has arisen in their capacity as recipients. It is also not in dispute that whatever service tax paid by them as recipient was available as credit and that they were eligible for rebate of duty on yarn cleared on payment of duty utilizing such credit. While there appears to be merit in the submission of learned SDR that the stay order of the Hon'ble High Court in relation to Rule 2(l)(d)(iv) when section 66A was not in force may not apply to the period when Section 66A is in force, the belief entertained by the respondent cannot be held other than bonafide especially in the context of revenue neutrality as the entire tax paid by them as recipient was available to them as credit. The respondents have not disputed the tax liability primarily on the ground that whatever service tax paid by them was available to them as credit. Under these peculiar facts and circumstances of the case, the view taken by the Commissioner (Appeals) in setting aside the penalty under section 78 appears to be reasonable and call for no interference.

9. From the above, it could be seen that the doubt of the appellants about their liability is a bona fide one. Therefore, the appellants are eligible to the benefit of section 80 of Finance Act, 1994 in view of the existence of reasonable cause for their to pay service tax in time. Therefore, the penalties imposed on the appellants under section 76 and 77 of Finance Act, 1994 liable to be set aside."

Customs, Excise & Service Tax Appellate Tribunal

4. We find that the appellate authority has gone by the precedent decision of the Tribunal in identical cases and have extended the benefit of Section 80 to the respondents by observing that it may be not a case of malafide. Revenue has not given any justifiable grounds to interfere in the impugned order of Commissioner (Appeals). We find no reason to allow the Revenue's appeal. The same is accordingly rejected.

(Dictated and pronounced in open court)

22.12.17

(B. RAVICHANDRAN)
Member (Technical)

(ARCHANA WADHWA)
Member (Judicial)

Rex

प्रमाणित प्रति/Certified True Copy
26/02/18
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकारी/(CESTAT)
चेन्नै/CHENNAI

Customs, Excise & Service Tax Appellate Tribunal