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

Appeal No. ST/42202/2015

(Arising out of Order-in-Appeal No.157/2015 (STA-II) dated 24.7.2015 passed by the Commissioner of Service Tax (Appeals - II), Chennai)

M/s. Gangabai Charities Appellant

Vs.

Commissioner of Service Tax, Chennai – II Respondent

Appearance

Shri A.S. Sriram, Advocate for the Appellant
Shri K.P. Muralidharan, AC (AR) for the Respondent

CORAM

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **30.06.2017**

Final Order No. 41105/2017

The appellant is a charitable trust registered as a service provider for mandap keeper service. During departmental audit, it appeared that the appellant had effected belated payments of service tax. Accordingly, proceedings were initiated proposing to demand service tax of Rs.4,23,948/- along with interest and for imposition of penalty under section 76 of the Finance Act, 1994. The original authority confirmed the service tax liability and interest liability of Rs.4,23,000/- and also imposed penalty of Rs.17,91,612/- under section 76 ibid. On appeal, Commissioner (Appeals) vide impugned order dated 24.7.20015, upheld the said order. Accordingly, the appellants are before this forum.

2. Today, when the matter came up for hearing, learned Advocate Shri A.S. Sriram submits that the appellant is a charitable organization involved in the field of feeding of the poor, educational assistance etc. He submits that although the payments were delayed, however, the entire tax liability was paid up by them before issue of the show cause notice and further around 50% of the interest liability thereon also was paid by them. The remaining interest liability has been discharged by them before issue of the order of the adjudicating authority. Learned Advocate submits that they are not disputing the tax liability. In fact, they had calculated and indicated in the returns filed by them. However, due to financial difficulties and as also for the fact that their Chartered Accountant had abruptly left employment, they were not in a position to discharge the tax dues in time. Accordingly, he prays for waiver of penalty imposed under section 76 by invoking section 80 of the Finance Act, 1994 in the matter.

3. On the other hand, learned AR Shri K.P. Muralidharan points out that the appellants had collected the tax but had not deposited the same within the prescribed period. He also contends that the penalty has been correctly worked out on the

basis of Rs.100/- per day upto 17.4.2006 and Rs.200/- per day thereafter.

4. Heard both sides.

5. Without doubt, appellants have delayed discharge of the service tax liability in spite of having collected the same from their clients. However, a perusal of the show cause notice indicates that the entire proceedings had been initiated after discharge of the entire tax liability, albeit belated, and the show cause notice only proposes demand of interest on such belated payments. Learned Advocate has averred that they had paid up almost 50% of the interest liability before issue of show cause notice and the remaining well before culmination of adjudication proceedings. I also note that the appellants are a charitable organization and not in the business of business. They definitely should not be equated with a manufacturing set up a service provider focused on profit making. I find the reasons put forth for delay in payment as reasonable and convincing. There is no allegation of suppression of facts with intent to evade payment of tax liability nor is there a proposal in the show cause notice to impose penalty under section 78 of the Finance Act, 1994. In the circumstances, I find that there was a reasonable cause for the failure on the part of the appellant to have discharged the tax liability in time and instead pay up the same with delay. Viewed in this light, I find that the provisions of section 80 ibid, as it was in force during

the relevant period, can be invoked in their case and accordingly, I hold that there is a case for complete waiver of the penalty imposed under section 76 ibid. Accordingly, the penalty imposed under section 76 ibid is set aside without interfering with any other part of the impugned order.

6. In the result, appeal is partly allowed in the above terms.

(Dictated and pronounced in open court)

30/06/2017

(Madhu Mohan Damodhar)
Member (Technical)

Rex

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते

प्रमाणित प्रति / Certified True Copy
31/7
सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण / (CESTAT)
चेन्नै / Chennai