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

ST/40321/2017

[Arising out of Order-in-Appeal No.CMB-CEX-000-APP-249-16, dated 09.11.2016 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Coimbatore]

M/s. LINGESWARA CREATION — APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, COIMBATORE — RESPONDENT

Appearance:

For the Appellant — Shri J.V. Niranjan, Adv.
For the Respondent — Shri A. Cletus, ADC (AR)

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of hearing/decision **06-07-2017**

FINAL ORDER NO. 41169/2017

Per Archana Wadhwa:

The only challenge in the present appeal is to imposition of penalty imposed under the provisions of section 77 and 78 of the Finance Act, 1994.

2. It is seen that the demand for the period October, 2009 to March, 2014 stands confirmed against the appellants to the extent of Rs.52,602/-, in respect of the GTA services so received by them on

reverse charge basis. The appellants on being pointed out by the Revenue deposited the said amount along with interest of Rs.20,007/-, even before issuance of the show-cause notice on 10.04.2015. The appellants are not challenging the confirmation of tax and interest.

3. It is their contention that the payment of service tax on reverse charge basis during the relevant period was subject-matter of litigation before various authorities and the law was not clear. The appellants being a small manufacture and exporter of their final product was not aware of the legal provisions and as such could not pay the service tax. As soon as they came to know about their liability to pay service tax, the same was paid along with interest. The appellant's contention is that the payment of interest is penal in nature and as such, there was no justification for further imposition of penalty under section 77 and 78 of the Finance Act, 1994. It stands contended by the learned advocate that receipt of such services was duly reflected in their statutory records and as such, no malafide can be attributed to them. In such a scenario, he seeks protection under section 80 of the Finance Act, 1994. Learned advocate also submits that having deposited the amount prior to show-cause notice, Revenue should not have issued show-cause notice and should have treated the matter as closed, in terms of the provisions of section 73(1A) of the Finance Act, 1994. He also draws my attention to various precedent decisions of the Tribunal on the said issue.

4. After hearing the learned departmental representative, I find that confirmation of demand and interest is not being challenged. The same is accordingly being confirmed. As regards penalty, I find that the the appellants were entertaining a bona fide belief and no

malafide can be attributed to them as the receipt of GTA services were duly reflected in their statutory records and law on the issue was also clear. As such, this is a fit case for granting relief under section 80 of the Finance Act, 1994. Further, the provisions of section 73 (1A) also is to be made applicable. In terms of the said provisions read with the circular issued by the Board vide F.No.137/167/2006-Cx.4, dated 03.10.2007, the proceedings should have been taken as having been concluded on deposit of the disputed amount along with interest. To the same effect is the Tribunal's decision in the case of *Commissioner of Service Tax, New Delhi Vs Independent New Services P. Ltd.* reported in *2011 (23) S.T.R.23 (Tri.-Del.)*.

5.. In view of the foregoing, while confirming demand and interest, I set aside the penalty imposed under section 77 and 78. Appeal is disposed of in the above terms.

(Dictated and pronounced in open court)

7/7/17.

(ARCHANA WADHWA)
MEMBER (JUDICIAL)

ksr
06-07-2017

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चेन्नै/Chennai

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते