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

E/42352/2016

(Arising out of Order-in-Appeal No. 119/2016 dated 18.10.2016 passed by the Commissioner of Central Excise (Appeals-I), Coimbatore).

M/s. Seshasayee Paper and Board Ltd. Appellant

CCE & ST, Tirunelveli Respondent

Appearance

Shri R. Suresh, Advocate
for the appellant

Shri R. Subramaniyam, AC (AR)
for the Respondents

CORAM :

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER

Date of Hearing: **16.05.2017**
Date of Pronouncement : 19.05.2017

FINAL ORDER Nos. 40696 **/2017**

As per the facts on record the appellant is engaged in the manufacture of papers falling under Chapter 48 of the Central Excise Tariff Act, 1985. For the purpose of export of their final products the appellant utilized the services of Foreign Commission Agent. In as much as Foreign Commission Agent do not have

Customs, Excise & Service Tax Appellate Tribunal office in India, the liability to pay service tax fell upon the appellant under Reverse charge mechanism. Accordingly, appellants were registered with the Service Tax Department and were discharging their service tax liability on the said services under the category of Business Auxiliary Service.

2. As per the audit conducted in the appellant's factory it was noticed that they have not discharged their full liability in respect of commission amount paid to the Foreign Commission Agents, resulting in default of payment of service tax to the extent of Rs.27,9[illegible],093/-. Accordingly, proceedings were initiated against them by way of issue of Show cause notice dated 25.08.2014, proposing to confirm the said amount along with interest and imposition of penalty. The show cause notice culminated into an order passed by the original adjudicating authority confirming service tax to the tune of Rs. 2,07,081/- along with confirmation of interest and imposition of penalty of identical amount under Section 78 of the Finance Act, 1994. In addition, penalty of Rs.5,000/- was imposed under Section 77 of the Finance Act,1994. On appeal against the above order, duty confirmation was upheld by the Commissioner (Appeals) along with upholding of penalty in terms of Section 77 of the Act. However, keeping in view of the facts that the said service tax was paid by the appellants along with interest before issue of show cause notice, he reduced the penalty imposed under Section 78 to Rs. 1,03,531/-. The said order is impugned before the Tribunal.

Customs, Excise & Service Tax Appellate Tribunal

3. After hearing both sides duly represented by Shri R. Suresh, Advocate for the appellant and Shri R. Subramaniyam, AC (AR) for the Revenue, I find that the only challenge in the present appeal is imposition of penalties. The appellant's contention is that the show cause notice was barred by limitation having been issued beyond the normal period. It stands contended before me that in as much as there was no malafide intention and in as much as the appellants had paid the dues before issue of show cause notice, the imposition of penalty was unwarranted.

4. After going through the impugned order, I note that the appellant was admittedly registered with the service tax department for discharge of their service tax liability in respect of the services of Foreign Commission Agents. However, instead of paying the service tax on the full amount of commission paid by them to the tune of Rs. 22,76,675/-, they paid the tax only for the commission value of Rs. 10,47,398/-. There is no explanation coming forth from the appellants as to why the value of the services was not fully reflected and as to why the tax was not paid on the full value of the services. The fact of suppression of a part of the service value ~~coming~~ came to forefront only with the audit conducted in the appellant's premises. As ~~much as~~ such, it becomes clear that the value of the services was suppressed without any justifiable and any reasonable cause and there was malafide on the part of the assesse. If that be so, the longer period of limitation is available to the Revenue to initiate the proceeding. The appellant's

reliance on various decisions of the Tribunal are distinguishable in as much as invocation or non-invocation of the extended period of limitation depends upon peculiar facts of a particular case. The fact that the appellants ~~have~~ were registered with the service tax department reflects upon their knowledge that the commission paid to the foreign agents is required to pay tax and non-payment of tax on a part of such commission so paid cannot be held to be on the basis of any bonafide. As such, I am of the view that the penalty imposed upon the appellants (which is only challenged in the present appeal) requires no further reduction. The same has already been reduced by the Commissioner (Appeals) to the extent of 50% and does not call for any further interference.

5. In view of the foregoing the impugned order is upheld and appeal is rejected.

(Order pronounced in the open Court on 19/5/17)

18/5/17

(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy

9/6

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