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

ST/266/2008

(Arising out of Order-in-Appeal No.112/2008 (SLM) ST dated 09.09.2008 passed by the Commissioner of Customs and Central Excise (Appeals).

M/s.Indian Chemicals & Minerals — Appellant

Vs

Commissioner of Central Excise, Salem — Respondent

Appearance

For the Appellant : Shri. M.A.Mudimannan, Advocate

For the Respondent : Shri.K.P.Muralidharan, AC (AR)

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : **03.08.2017**

FINAL ORDER No. 41514/2017

Per Bench

The appellants are engaged in trading of Limestone and minerals and are registered with the service tax department under the category of 'Goods Transport Agency Services'. They paid service tax on the inward and outward freight for the period 1.1.2005 to 31.3.2005. After 1.4.2005 the appellants stopped paying service tax. Show cause notice was issued for the non-payment of service tax for the period 1.4.2005 to 28.2.2006. After due process of law the original authority confirmed the demand of Rs.1,42,460/- alongwith interest and also imposed penalties under Section 76,77 and 78 of the Finance Act, 1994. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

Customs, Excise & Service Tax Appellate Tribunal

2. On behalf of appellant, the Ld.Counsel Shri.Mudimannan submitted that the appellant did not discharge service tax after 31.3.2005 for the reason that the appellant bonafidely believed that being a proprietory concern they would not fall within the definition of GTA as per the amendment brought forth by notification No.35/2004-ST dt.31.12.2004. That appellant not being a body corporate or co-operative society or factory would not fall under category of GTA and therefore on such belief stopped paying the service tax. The Ld.Counsel submitted, that appellant is now not contesting the liability to pay service tax and is confining the contest on the eligibility of abatement as per notification 32/2004-ST dt.3.12.2004 and also on the penalties imposed. The Ld.Counsel submitted that the demand has been confirmed without giving the benefit of abatement as per the above notification. That appellant would be able to furnish necessary declaration and therefore requested for remand to the original authority for verification and considering the eligibility of 75% abatement. On the penalties imposed the Ld.Counsel submitted that there was much confusion and doubt as to those who would fall within the category of Goods Transport Agency. The appellant being a proprietory concern, was given to understand after 1.4.2005 that he is not liable to pay service tax under GTA and therefore stopped paying service tax. That it was only due to the wrong understanding of the law and that there was no intention to evade payment of service tax. He pleaded that the penalties may be set aside.

3. The Ld.AR Shri.K.P.Muralidharan reiterated the findings in the impugned order. He adverted to the notification 35/2004 and explained that the appellant is liable to pay service tax on the freight charges incurred.

4. Heard both sides.

Customs, Excise & Service Tax Appellate Tribunal

5. The Ld.Counsel for appellant has submitted that the appellant does not wish to contest the liability to pay service tax and is confining the contest with regard to demand on the eligibility of abatement. The appellant has to furnish necessary document / declaration to avail the benefit of 75% abatement in terms of notification 32/2004. In *Radhu Industries Vs Commissioner of Central Excise, Gaziabad 2016 (41) STR 574 (Tri-Del)*, the Tribunal has held that new conditions cannot be added to a notification by issuing circulars. In our view, the issue whether the appellant is eligible for abatement has to be verified by the adjudicating authority for which the matter requires to be remanded.

6. The Ld.Counsel has also vehemently argued to set aside the penalties imposed. On going through the records, it is seen that at the stage of adjudication as well as at first appellate stage, the appellant has strongly contested that they would not be covered by the definition of GTA as they were only a proprietory concern. The statement given by Shri.Mahesh K. Sharma also shows that they discontinued to pay tax on the belief that they are not covered under GTA. It might have been due to wrong legal advice. During the relevant period there was much doubt regarding the definition of GTA. In the facts and circumstances of the case, we are of the considered opinion that appellant has put forward reasonable cause for non-payment of service tax and the penalties under Section 76 and 78 are required to be waived, which we hereby do. The penalties imposed under Section 76 and 78 are hereby set aside.

7. In the result, the appeal is partly allowed by setting aside the penalties imposed under Section 76 and 78 without disturbing the penalty imposed under Section 77 of Finance Act, 1994. The appeal is partly remanded by directing the adjudicating authority to verify the eligibility of credit on production of necessary documents. The appeal is disposed accordingly.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

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

V.Sundararaman

Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार / Asst. Registrar
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चेन्नै / Chennai