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

ST/109/2008, ST/107/2009, ST/567/2009 and ST/42251/2015

(Arising out Order –in-Original No. 17/2008 dated 26.02.2008, OIO No. 23/2008 dated 26.03.2008, OIO No. 28/2009 dated 19.08.2009 and OIO No. 2/2015 dated 27.07.2015 by the Commissioner of Service Tax, Chennai)

M/s. Benson and Benson : Appellant

Vs.

CST, Chennai : Respondent

Appearance

Shri G, Natarajan, Advocate
for the appellants

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

CORAM :

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

Date of Hearing/Decision: **01.09.2017**

FINAL ORDER No. 42135-42137 **/2017**
& 42138/2017

Per Bench

The appellants were issued SCNs for different period alleging short payment of service tax under the category of Manpower Recruitment and Supply services. After adjudication, the original authority confirmed the demand along with interest and also imposed penalties. Being aggrieved, the appellant is now before the Tribunal. The details of the period involved and the demand and penalties imposed in each of the appeal is shown as under:-

ST/109/2008

Period involved	:	June 2005 to September 2006
ST demanded	:	Rs. 52,71,511/-
Penalties	:	Sec. 76 – Rs. 100/200 per day Sec. 77 – Rs. 1,000/- Sec. 78 – Rs. 75,00,000/-
Paid so far	:	Rs. 39,55,544/-
ST for normal period	:	Rs. 5,40,951/-

ST/107/2008

Period involved	:	October 2006 to September 2007
ST demanded	:	Rs. 1,52,34,804/-
Penalties	:	Sec. 76 – Rs. 200 per day Sec. 77 – Rs. 1,000/- Sec. 78 – Rs. 1,55,00,000/-
Paid so far	:	Rs. 1,55,95,398/- and Int. 11,17,386/-

ST/567/2008

Period involved	:	October 2007 to March 2008
ST demanded	:	Rs. 78,06,739/-
Penalties	:	Sec. 76 – Rs. 100/200 per day
Paid so far	:	Rs. 78,06,739/- and Rs. 16,72,359/-

ST/42251/2016

Period involved	:	April 2008 to March 2011
ST demanded	:	Rs. 83,72,755/-
Penalties	:	Sec. 76 – Rs. 31,19,542/- Sec. 77 – Rs. 10,000/- Sec. 78 – Rs. 83,72,755/-

2.1 On behalf of the appellant the Ld. Counsel Shri G. Natarajan submitted that ever since the introduction of service tax on 'Manpower Recruitment and Supply service' there was wide spread reluctance on the part of the Companies to reimburse the service tax, as the service tax on such services was payable including the salaries of the employees and not limited on the margin received by the appellant who is the service provider, there was huge burden on the part of the appellant to pay the service tax since many of the service recipients failed to reimburse the service tax. Appellant made sincere efforts and insisted their customers to reimburse the service tax. The appellants have also written letters to its customers on 14.12.2006, directed them to reimburse the service tax to the appellants. That therefore there was no malafide intention to evade payment of service tax. Appellants had failed to discharge service tax liability only because the customers failed to reimburse the service tax which resulted in heavy financial burden to the appellants. That therefore the demand raised invoking the extended period alleging suppression of facts is unsustainable. He therefore pleaded to set aside the demand for the extended period and also to set aside the penalty.

2.2 With regard to Appeal No. ST/42251/2015, the Ld. Counsel submitted that the demand has been made on the basis of the profit and loss account of the appellants and by comparing the same with the ST-3 returns filed by them. There was difference in the value which was explained by the appellant to the department.

That the service tax charged was accounted as income and therefore the income shown in the profit and loss account included the service tax charged by them. That the appellant would be able to explain the same and requested that the matter may be remanded to the adjudicating authority for reconsideration of the issue.

3. The Ld. AR Shri K.P. Muralidaran reiterated the findings in the impugned orders. He submitted that the appellant has collected the service tax from the customers and has failed to deposit the same. That therefore the SCN issued invoking the extended period is legal and proper.

4.1 On behalf of the appellant, in cases other than ST/42251/2015, the Ld. Counsel has merely put forward the arguments on the issue of limitation. It is his case that since the customers were reluctant to reimburse the service tax they were put to much financial burden and therefore could not pay the service tax. That there was no intention to pay the service tax. We do not find this argument tenable. As pointed out by the Ld.AR substantial amount has been collected by the appellant from their customers and has not been deposited with the Govt. Further the appellant's liability of service tax for the period October 2006 to September 2007 is Rs.1,52,34,804/- which shows that the appellant is a huge business concern. However, taking into consideration of the fact that the appellant was to discharge the service tax on the reimbursable amount also namely salaries etc., we are of the considered view that the penalty imposed is unwarranted. Therefore in appeals No.ST/109/2008, ST/107/2009 and ST/567/2009, penalties imposed under Section 76 and 78 are set aside. The impugned orders in these appeals are modified to the extent of setting aside the penalties imposed under Sections 76 and 78 without disturbing the demand of service tax, interest thereon or the penalty imposed under Section 77 of the Finance Act, 1994.

4.2 In appeal No. ST/42251/2015 as discussed earlier, the Ld. Counsel has brought out sufficient grounds for remanding the matter for re-adjudication. We, therefore remand the matter to the adjudicating authority leaving all issues in these appeals open, directing the adjudicating authority to conduct denovo adjudication after giving sufficient opportunity to the appellants to furnish evidences and also for personal hearing. The impugned order in appeal ST/42251/2015 is set aside and the appeal is allowed by way of remand.

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

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

Sulekha Beevi
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

BB

Customs, Excise & Service Tax Appellate Tribunal

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चेन्नै / Chennai