IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
Court : DB- B1

ST/40844/2013

(Arising out of Order-in-Appeal No. 294/2012 dated 21.12.2012 passed by the Commissioner Central Excise (Appeals), Madurai).

M/s. Shri Prakash Constructions : Appellant

Vs.

CCE, Madurai : Respondent

Appearance

Ms. Amrutha Arvind, Advocate
for the Appellant

Ms. T. Usha devi, DC (AR)
for the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: **11.02.2019**

FINAL ORDER No**. 40310/2019**

Per Madhu Mohan Damodhar,

After hearing both sides, we find that the appeal is restricted to the penalty of Rs. 77,756/- imposed under Section 77(1) of the Finance Act, 1994 and also Penalty of Rs.77,756/- imposed under Section 78 of the Act ibid.

2. Ld. Advocate, Ms. Amrutha Arvind appearing on behalf of the appellant made the following submissions:-

a) Appellants were not aware of such tax liability and for which reason they had not discharged the tax in time.

b) Appellants have also not collected service tax from their customers, which itself shows that they were not aware of the law and they had no intention to evade tax.

c) They had disclosed the entire amount in their income tax returns. However, on being pointed out by the department, appellant paid the tax liability before the issue of SCN.

d) During the period of dispute, there was a confusion on the liability to discharge tax on the services performed by them viz., Construction services under the Works Contract.

e) In the recent decision of the Tribunal in Real Value Promoters Pvt. Ltd. – 2018 (9) TMI 2249 – CESTAT, Chennai, Tribunal has held that even after 01.06.2007 the service tax liability on composite contracts has to be demanded only under Works contract Service. However, the present appeal is only for setting aside the penalties imposed and not for the tax liability.

In the circumstances, Ld. Advocate submits that there was a reasonable cause for the failure to pay tax liability, hence she prays that the penalties imposed may be waived.

3. Ld.AR, Ms. T. Usha Devi, DC, opposes the application and supports the impugned order.

4.1 Heard both sides. We find merit in the assertion of the Ld. Advocate. Indubitably, there was confusion in respect of taxability on composite works contract service, under the category of CICS, which was only laid to rest by the Hon'ble Supreme Court in *CCE Vs. Larsen & Toubro Ltd.* – 2015 (39) STR 913 (S.C.). The ratio laid down by the Hon'ble Apex court therein has been followed by this Tribunal in *Real Value Promoters Pvt. Ltd. & Others Vs. Commissioner of GST & CE, Chennai* – Final Order No. 42436042438/2018 dated 18.09.2018. It is also pertinent to note that the appellant did not collect tax from their service recipients and that they have paid up the tax liability immediately on pointed out. Viewed in this light, there is a definite case for waiver of penalty under Section 80 of the Act ibid.

4.2. In the event, while no disturbance is being made in demand of tax liability of Rs. 77,756/- along with interest thereon, penalties imposed under Sections 77 & 78 of the Act ibid are set aside.

5. Appeal allowed on above terms.

(Order dictated and pronounced in the open Court)

(P.DINESHA)	(MADHU MOHAN DAMODHAR)
MEMBER (JUDICIAL)	MEMBER (TECHNICAL)

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