CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 54132 of 2018-SM
(Arising out of order in appeal No. 909(CRM)ST/JDR/2018 dated 16.08.2018 passed by Commissioner (Appeals) Central Excise & Central Goods & Service Tax,Jodhpur).

M/s Asian Industrial Security Services **Appellant**
4, Shri Ram colony, E, Class, Pratap Nagar
Udaipur (Rajasthan).

VERSUS

Commissioner, Central Goods and Service Tax, Customs & Central Excise **Respondent**
G-105, New Industrial Area
Opp. Diesel Shed, Basni, Jodhpur.

APPEARANCE:

Shri Abhishek Jaju, Advocate for the appellant
Shri Pradeep Gupta, Authorised Representative for the respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 51509/2019

DATE OF HEARING/DECISION: 01.08.2019

ANIL CHOUDHARY:

The issue in this appeal is whether appellant have been rightly imposed penalty under Section 78 of the Finance Act.

2. The brief facts are that the appellant is engaged in providing 'Security Agency Service' and 'Manpower Recruitment Service'. The appellant is a partnership firm having three partners. It is alleged in the show cause notice that pursuant to the investigation of the appellant firm, the Revenue found that for the period 2011-12 to 2014-15 appellant have shown less amount of taxable service, than the amount actually billed and collected. In the statement recorded of the partner Shri Manoj Bairagi, he stated inter alia that they

received all the payments/ remuneration for the services through check or RTGS only. They raise the bills on monthly basis and have charged service tax in the bill. It is also stated that they have filed ST-3 return regularly. It is also stated that they have shown less receipt in ST-3 return then the actual receipt in the books, due to financial crisis. Further, he undertook to pay the tax. Further, in the show cause notice it has been stated that the appellant was disclosing income to the Income Tax Department on presumptive basis under the provision of Section 44AD of the Income Tax Act. Under the mistaken belief that the taxable amount under the provision of Income Tax Act will also be applicable for payment of service tax, and they erroneously disclosed lesser taxable turnover. It is further urged that they have deposited the service tax of Rs. 3,49,387/- alongwith their return, but Revenue had given credit for lesser amount. Further, whatever appears shortage by Revenue, amounting to Rs.83,461/-, the appellant have deposited Rs. 10,45,652/-. Further, appellant had pointed out the errors in the tax calculation by Revenue, and also filed calculation of taxable turnover. The adjudicating authority confirmed a lower amount of Rs. 7,79,877/- alongwith interest.

3. Learned Counsel further urges that under the substituted Section 78 w.e.f. 14.05.2015 in the Finance Act, the 2nd proviso to Section 78(1) provides that where service tax and interest has been paid within a period of thirty days from the date of service of the notice under the proviso to sub-section (1) of Section 73, the penalty payable shall be 15% of such service tax and proceedings in respect

of such service tax, interest and penalty shall be deemed to be concluded. Accordingly, he prayed for appropriate relief.

4. Learned Authorised Representative for Revenue have relied upon the finding in the impugned order.

5. Having considered the rival contentions, I find that appellant had given a cogent explanation that they have disclosed the turnover for service tax, mistakenly on the basis of taxable turnover under Income Tax. Further, the appellant on being so pointed out, the discrepancy by Revenue, the appellant deposited the service tax (short paid) before issue of show cause notice. Such deposit is found to be of about Rs. 3 lakh in excess of the adjudicated amount. Thus, the said amount of excess payment takes care of the 15% penalty and interest under Section 75 of the Act. In this view of the matter, I hold that the appellant is entitled to benefit of 15% penalty, which under the facts and circumstances is paid before issue of show cause notice. Thus, penalty under Section 78 is reduced to 15% of the adjudicated amount of short paid service tax. Thus, the appeal is allowed in part as indicated above. The appellant is directed to file calculation of the interest, and penalty as 15% before the adjudicating authority. In case of any short fall, the same shall be deposited with the adjudicating authority within thirty days, on being so pointed out by the adjudicating authority. Penalty under section 77 is not modified.

(Dictated and pronounced in open Court)

(**Anil Chouddhary**)
Member (Judicial)

Pant