CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. IV

Service Tax Appeal No. 50988 of 2018

(Arising out of Order-in-Appeal No. 59(SM)ST/JPR/2018 dated 31.01.2018 passed by the Commissioner, Central Goods & Service Tax, Jaipur)

M/s Adarsh Vidhya Mandir **Appellant**
Managing Committee,
Govind Marg, Adarsh Nagar,
Jaipur, Rajasthan.

VERSUS

Commissioner, Central Goods & Service Tax, Jaipur **Respondent**

Appearance

Ms. Priyanka Goel, Advocate – for the Appellant.

Shri S.K. Meena, Authorized Representative – for the Respondent

CORAM :

HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

Date of Hearing/Decision : 08/12/2023

Final Order No. 51674/2023

Dr. Rachna Gupta

The appellant in the present case is engaged in providing taxable services of renting of immovable property. During the course of audit of appellant's record, department observed that the appellant has not paid service on the amount of building rent received by them from the bank as their tenants. Resultantly, vide Show Cause Notice No. 4683 dated 21.05.2013 demand of service tax amounting to Rs.4,72,462/- was proposed to be recovered from the appellant along with the proportionate interest and the appropriate penalty. The proposal was partially confirmed by confirming the demand of Rs. 96,044/-. Rest of the demand was dropped relying upon the decision of this Tribunal in the case of **Murli Realtors Pvt. Ltd.** However, penalty was also imposed upon the appellant vide order in original No. 34/2015 dated 14.05.2015. The appeal against the said order has been rejected vide the order in appeal No. 59/2018 dated 31.01.2018. Still being aggrieved, the appellant is before this Tribunal.

2. We have heard Ms. Priyanka Goel, learned Advocate for the appellant and Shri S.K. Meena, learned Departmental Representative for the department.

3. Learned Counsel for the appellant has mentioned that the demand on the rent received from the bank was not deposited due to inadvertent error. However, the moment, it was pointed out the appellant made the payment vide challan dated 1.3.2012. The department still has served the show cause notice in May 2013. Keeping in view the said inadvertence and that the payment was much prior the issuance of show cause notice, the penalty should not have been imposed. Learned counsel, however, has acknowledged to withdraw her claim challenging the confirmation of demand of Rs. 96,044/- and has prayed for the order imposing penalty to be set aside. While rebutting the submissions, learned Departmental Representative has relied upon the finding in para 6 of the order under challenge impressing upon that Commissioner (Appeals) has rightly appreciated the suppression on parts of the appellant. The appeal is prayed to be dismissed.

4. Having heard the parties, we hold as follows :

5 There is no dispute to the fact that the amount as has been confirmed against the appellant was paid by the appellant much prior the issuance of the impugned show cause notice. The appellant in the present case is not disputing its liability towards said amount. The order is now challenged only qua the imposition of penalty of an amount equal to the amount of the demand confirmed.

6. In light of above observed acknowledgement of appellant and facts on record about payment of amount of service tax by the appellant prior issuance of show cause notice, we rely upon proviso to Section 76(1) and 80 of the Finance Act, 1994. The provision reads as under:

> **"76. *Penalty for failure to pay service tax* –**
>
> (*1*) Where service tax has not been levied or paid, or has been short-levied or short-paid, or erroneously refunded, for any reason, other than the reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with the intent to evade payment of service tax, the person who has been served notice under sub-section (*1*) of section 73 shall, in addition to the service tax and interest specified in the notice, be also liable to pay a penalty not exceeding ten per cent of the amount of such service tax:
>
> **"80 Penalty not to be imposed in certain cases**
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> (1) Notwithstanding anything contained in the provisions of section 76, or section 77, no penalty shall be imposable on the assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for the said failure.
>
> (2) Notwithstanding anything contained in the provisions of section 76 or section 77 or section 78, no penalty shall be imposable for failure to pay service tax payable, as on the 6th day of March, 2012, on the taxable service referred to in sub-clause (zzzz) of clause (105) of section 65, subject to the condition that the amount of service tax along with interest is paid in full within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President."

7. From the said provisions it is clear that where the payment of tax liability as demanded stands deposited by the assessee within 30 days of issuance of show cause notice, no penalty has to be imposed on such assessee. In the present case, the appellant - assessee deposited the amount no service did it was pointed out. Even show cause notice was not yet served, hence we hold that penalty should not have been imposed upon the appellant. We also observe that plea of it to be an inadvertent error is taken by the appellant. Department also has not produced any evidence proving any positive act on part of appellant which may prove the intentional evasion of duty by the appellant. Hence while invoking Section 80, as quoted above, we hold that penalty is not imposable. Resultantly, we hereby set aside the order imposing penalty upon the appellant. The order under challenge is, therefore, set aside to the said extent. Consequent thereto, the appeal stands partly allowed.

(Dictated & pronounced in open Court)

(Dr. Rachna Gupta)
Member (Judicial)

(Hemambika R. Priya)
Member (Technical

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