CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – III

Service Tax Appeal No. / 50674 / 2019 (SM)

[Arising out of Order-in-Appeal No. 100/ST/DLH/2018 dated 31.05.2018 passed by the Commissioner (Appeals-1) Central Tax/GST, Delhi]

M/s Spain Electronics
6/270, Lalita Park, Laxmi Nagar,
New Delhi – 110 092. **...Appellant**

Vs.

Commissioner of Goods and Service Tax
Customs and Central Excise,
Room No. 134, C.R. Building, I.P. State,
New Delhi. **...Respondent**

APPEARANCE:

Ms. Vandana Singh, Advocate for the Appellant
Shri K. Poddar, Authorised Representative for the Respondent

Coram: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)

DATE OF HEARING : 13.08.2019
DATE OF DECISION : 13.08.2019

FINAL ORDER No. 51132/2019

ASHOK JINDAL

The Appellant is in appeal against the impugned order challenging observation made by learned Commissioner (Appeals) with regard to the Order-in-Original dated 30/01/2017 wherein penalty under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994 have been imposed on the Appellant.

2. The facts of the case are that a show cause notice dated 20.08.2014 had been issued to the Appellant for late filing on the returns for the period June 2012, September, 2012 and March 2013

wherein the Appellant did not file their service tax return in time. The show cause notice was issued to impose penalty under Section 70 of the Finance Act, 1994 read with Rule 7C of the Service Tax Rules, 1994. The Adjudicating Authority imposed the penalty of Rs.57,000/- under Rule 7C of Service Tax Rules, 1994 read with Section 70 of the Finance Act, 1994 and the said findings of the Adjudicating Authority has been confirmed by the learned Commissioner (Appeals) by way of impugned order. Aggrieved from the said order 2014, the appellant is before me.

3. The learned Counsel for the Appellant submitted that as per CBEC Circular No. 97/8/2007 dated 23.08.2007, that if the Appellant is not required to pay service tax then it is not required to file service tax return under Section 70 of the Finance Act, 1994 read with Rule 7C of the Rules. Therefore, no penalty can be imposed on the Appellant.

4. The learned Departmental Representative reiterated the findings of the impugned order.

5. Heard the parties and considered the submissions.

6. The CBEC Circular No. 97/8/2007 dated 23.08.2007 which is reproduced here below:

> ***6.1 The service tax return is required to be filed under Section 70 of the Act read with rule 7 of the Rules by "any person liable to pay the service tax". This return is required to be filed on a half yearly basis, in Form ST-3. For the periods from April to September and October to March, it must be filed by the 25th October and the 25th April respectively. Further, 'Input Service Distributor' is also required to file this return. Persons who are not liable to pay service tax (because of an exemption including turnover based exemption), are not required to file ST-3 return.***

7. On going through the said circular, I find that if no service tax is payable by the Appellant, the appellant s not required to file the service tax return. Admittedly, in the case in hand, the Appellant was not required to pay service tax. Therefore, as per the said Circular the Appellant was not required to file service tax return. If that is so, no penalty can be imposed on the Appellant. Admittedly, no service tax was required to be paid by the Appellant, no return was required to be filed by the Appellant. Therefore, no penalty can be imposed on the Appellant. In that circumstances, the penalty imposed on the Appellant of Rs. 57000/- is set aside.

In these terms, the appeal is allowed.

[Dictated and pronounced in the open Court]

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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