CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO.-IV

Service Tax Appeal No. 51621 of 2018 [SM]

[Arising out of Order-in-Appeal No. 163 (AG)/CE/JDR/2018 dated 15/03/2018 passed by Commissioner, CGST, Jodhpur]

M/s Ghanerao Hotels Private Limited **Appellant**
2/A New Fatehpura, Shastri Circle, Udaipur,
Rajasthan

Versus

Commissioner of Central Goods &
Service Tax, Udaipur **Respondent**
142-B, Sector-11, Hiran Magri, Udaipur

Appearance
Shri Narandar Singhvi, Advocate for the appellant

Shri K Poddar, Authorized Representative for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**

Date of Hearing/Decision: 11.09.2019

Final Order No: 51201 /2019

Per Ashok Jindal:

1. The appellant is in appeal against the impugned order where they are contesting imposition of penalty under Section 78 of the Finance Act, 1994 and late fees imposed under Rule 7C of the Service Tax Rules, 1994.
2. The facts of the case are that the appellant was providing various taxable services, namely, "Renting of immovable property service", Accommodation Service", Restaurant Service" etc., and did not obtain service tax registration. As all the services were taxable from July, 2012, on

08.10.2013 the appellant themselves got registered with the service tax Department and started paying service tax. In February, 2014, an investigation was started and the appellant paid an amount of Rs. 8,54,784/- as service tax and Rs. 44,207/- as interest. Later on, a Show Cause notice dated 18.11.2015 was issued to the appellant by invoking the extended period of limitation to demand of service tax of Rs. 9,38,760/- from the appellant and along with interest and penalties and fine were also imposed. The matter was adjudicated, the Adjudicating Authority hold that prior to July, 2012 the appellant was not liable to pay service tax, therefore, the demand from the period prior to July, 2012 was dropped and the remaining demand proposed in the Show Cause Notice was confirmed along with interest and penalty under Section 78 of the Act was imposed. Further a fine of Rs. 1,40,000/- also imposed on the appellant under Rule 7C of Service Tax Rules, 1994. The said order was challenged by the appellant before the learned Commissioner (Appeal) who gave the benefit of threshold limit to the appellant and further reduce the demand of service tax but confirmed the penalty under Section 78 of the Finance Act and fine under Rule 7C of the Service Tax Rules, 1994. Against the order of imposition of penalty and fine, the appellant is before this Tribunal.

3. The learned Counsel for the appellant submits that as the appellant paid service tax along with interest before issuance of the Show Cause Notice, therefore, in terms of Section 73 (3) of Finance Act, 1994, no Show Cause Notice

was required to be issued to the appellant, as appellant was not having any *malafide* intention as they have taken service tax registration on 08.10.2013, whereas the investigation started in February, 2014. Therefore, penalty and fine are required to be dropped.

4. On the other hand learned AR supported the impugned order.
5. Heard both the sides and considered the submissions.
6. On perusal of the records place before me I find that it is a fact on record that appellant availed service tax Registration on 08.10.2013, whereas investigation was started on February, 2014, as appellant started paying service tax of their own after obtaining registration. In that circumstances, I hold that extended period of limitation it is not invokable, moreover, appellant has paid service tax along with interest before issuance of the Show Cause Notice. In that circumstances, in terms of Section 73 (3) of the Act, no Show Cause Notice was required to be issued to the appellant.
7. Therefore, proceedings initiated against the appellant through the impugned Show Cause Notice are set aside. In result the appeal is allowed to the extent by dropping the penalty and fine imposed on the appellant in the impugned order. In this terms, appeal is disposed of.

(Dictated and pronounced in open court)

(Ashok Jindal)
Member (Judicial)

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