CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Single Member Bench
Court – I

Appeal No. ST/31015/2017
(Arising out of Order-in-Appeal No. HYD-EXCUS-004-APP-0089-17-18 ST, DT. 31.05.2017 passed by CST (Appeals), Hyderabad)

PRIVATE EYE SECURITY SERVICES ….. Appellant(s)

Vs.

CST Hyderabad ST …..Respondent(s)

Appearance
Shri Ch. Nageswara Rao, Consultant for the Appellant.

Shri Dass Thavanam , Superintendent /AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Date of Hearing: 13.08.2018
Date of Decision: 11.09.2018

FINAL ORDER No. A/31146/2018

[Order per: M.V. Ravindran]

1. This appeal is directed against Order-in-Appeal No. HYD-EXCUS-004-APP-0089-17-18 ST, DT. 31.05.2017.

2. Heard both sides and perused the records.

3. Ld. Counsel, at the outset, submits that they are contesting only the amount of penalty imposed by the adjudicating authority and upheld by the first appellate authority. It is his submission that the entire issue is regarding non discharge of service tax by the appellant for the period 2004-05 to 2008-09 on the TDS value (difference of value between ST-3 returns and IT returns for the relevant period). It is his submission that appellant had paid the entire tax liability along with interest as has been pointed out by the audit party before the issuance of show cause notices and interest paid before adjudication. It is his submission that in view of such factual position, the penalty imposed under section 78 of Finance Act 1994 needs to be set aside as per provisions of Section 73 (3) of the Finance Act, 1994 and as held by Hon'ble High Court of Karnataka in the case of Commissioner of Service Tax, Bangalore vs. Master Kleen [2012(25)s.t.r 439 (Kar.)] and Hon'ble High Court of Bombay in the case of CCE Nagpur-II vs. Galaxy Construction Pvt. LTd. [2017(48)S.T.R 37 (Bom.)]. He draws my attention to various challans and the statements showing the payment of tax liability and the interest before adjudication.

4. Ld. DR reiterated the findings of the lower authorities.

5. On careful consideration, I find that the appellant is only contesting the penalty imposed by the adjudicating authority U/s 78 of Finance Act, 1994 and upheld by the first appellate authority. IT is seen from the impugned order that the first appellate authority has not accepted the

pleadings of the appellant in the Memorandum of appeal as to the amounts being paid by the appellant before issuance of show cause notices and adjudication and no penalty be imposed.

6. In my view, the findings recorded by the first appellate authority that appellant has not contested the confirmation of penalty imposed under section 78 of the Finance Act 1994 seems to be incorrect as the culmination of the entire proceedings took place on remand and penalty under section 78 of the Finance Act also got crystallised in the remand proceedings. I find that the provisions of Section 73(3) of the Finance Act 1994 has always been considered by various High Courts, more noticeably Hon'ble High Court of Bombay (Galaxy Constructions Pvt. Ltd.); Hon'ble High Courts of Karnataka in the case of Master Kleen and have come to a conclusion that the tax liability and interest if paid before issuance of show cause notice, no penalty be visited under Section 78. Moreover, I find that in the case in hand the issue is regarding non payment of service tax on the TDS deducted as per agreement, which was contested before various forums and appellant could have had a bonafide belief that tax liability need not be discharged on such TDS amounts. Be it as it may, since the entire tax liability in these proceedings stands paid before issuance of show cause notices and the interest thereof stands paid before adjudication, I hold that penalty imposed under section 78 of the Finance Act 1994 is uncalled for and accordingly needs to be set aside, by invoking provisions of Section 80 of the Finance Act, 1994.

7. Appeal to the extent of setting aside of the penalty imposed under section 78, is allowed.

(Pronounced in the open Court on 11.09.2018)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

vrg