CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court - I

Appeal No.ST/891/2010

(Arising out of Order-in-Original No.01/2010 (RS), dated 25.01.2010 passed by CCCE & ST, Visakhapatnam - I)

CCCE, Visakhapatnam - I ….. Appellant(s)

Vs.

ADR Engineering Enterprises ….. Respondent(s)

Appearance

Shri Dass Thavanam, Superintendent/AR for the Appellant.

Shri G.P. Sastry, Advocate for the Respondent.

Coram:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 27.08.2018
Date of Decision: 27.08.2018

FINAL ORDER No. A/31094/2018

[Order per: M.V.Ravindran.]

1. This appeal is filed by the revenue against the Order-in-Original No. 01/2010 (RS), dated 25.01.2010.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the show cause notice dated 23.10.2008 was issued to respondent, herein for demand of the service tax liability for the period 2003-04 to 31.03.2008 on the ground that they had not discharged the tax liability under the category of cargo handling

services. It is on record that the respondent was registered with the authorities for manpower recruitment agency, business auxiliary services, management repair and maintenance services. It is also on record that respondent herein contested the show cause notice on merits as well as on limitation. The adjudicating authority after considering the fact that the respondent had discharged the service tax liability, interest and equivalent amount of penalty under Sec.78 of Finance Act, 1994 recorded finding so. The adjudicating authority did not impose any penalty under Sec.77 of Finance Act, 1994. Revenue is aggrieved by such non-imposition of penalty under Sec.77 of the Finance Act, 1994.

4. Learned Counsel appearing for the respondent submits that respondent had discharged tax liability, interest and 25% of penalty imposed under Sec.78 within one month of the receipt of the Order-in-Original. On a specific query, he does not have any documents to show that the amount has been discharged but undertakes to produce the same which we direct him to do so within two weeks. Revenue's case in the appeal is that as per Sec.77 of the Finance Act, 1994, it is mandated that for non-filing of the returns, the assessee shall be liable to pay penalty which may extend to Rs.5,000/- or Rs.200 per day, whichever is higher. We do find that this Sec.77 was invoked in the show cause notice but no reasoning has been given by the adjudicating authority for non-impositions of penalty under this section. We find that assuming that revenue's appeal merits acceptance for non-imposition of penalty under Sec.77 of the Finance Act, 1994, to the maximum of Rs.200 per day till the liability continues, even considered for entire period i.e. 2003-04 to 31.03.2008, the penalty that can be imposed and collected from the respondent herein would be

approximately Rs.4 lakhs. In our view, since the amount involved in this case is less than Rs.20 lakhs, we find that the revenue's appeal has to be rejected on the ground of new litigation policy, according to which the revenue can contest the appeals before the Tribunal where the amount involved is more than Rs.20 lakhs.

5. In view of the foregoing, the appeal stands rejected.

(Dictated and pronounced in the open Court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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