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

APPEAL No. ST/175/2009
*(Arising out of **Order-in-Original** No. 33/2008-ST, dated 26.12.2008 passed by CCCE&ST, Hyderabad-II Commissionerate)*

Sushee Hi Tech Constructions Pvt. Ltd. .. APPELLANT

Vs

CCE, C&ST, Hyderabad-II .. RESPONDENT

Appearance
Shri B. Venugopal, Advocate for the Appellant.

Shri Mir Anwar Mohiuddin, Asst. Commissioner/AR for the Respondent.

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

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 18.12.2018
Date of Decision: 18.12.2018

FINAL ORDER No. A/31611/2018

[Order per: Mr. M.V. Ravindran)

1. This appeal is filed against Order-in-Original No. 33/2008-ST, dated 26.12.2008.

2. Heard both sides and perused the records.

3. The issue that falls for consideration in this appeal is regarding the penalties imposed by the adjudicating authority on the appellant under sections 76, 77 & 78 of the Finance Act,1994.

4. The brief facts of the case is that appellant herein is rendering the services of site formation and clearances, excavation and earth moving and demolition (site formation), entered into an agreement on 10.01.2005 with Western Coalfields Limited for rendering the services. When the agreement was entered into, the services rendered by the appellant were not taxable and the agreement was entered into based upon the tender filed by the appellant. Subsequently, the services of 'Site Formation' came into service tax net from 16.06.2005 and the appellant herein communicated with the authorities in Western Coalfields Limited for the discharge of service tax liability on the amount of consideration received by them. The said letter dated 16.06.2005 is annexed in the appeal memorandum at page Nos. 143 and 144. Subsequently, some correspondence was entered with the authorities and the DGCEI for payment of tax. It is on records and correctly submitted by Ld. Counsel that M/s Western Coalfields Ltd. had discharged the service tax liability on 06.03.2007 and the balance service tax liability which was due from the appellant was discharged along with interest on 16.07.2007. A show cause notice was issued to the appellant on 16.06.2008 seeking to demand

service tax with interest and also proposing to impose penalties which were confirmed by the adjudicating authority.

5. On careful consideration of the submissions made, we find that the letter dated 30.06.2005 written by appellant sought the service tax amount from M/s Western Coalfields Ltd. which was not responded to by the authorities of Western Coalfields Ltd. In our view, there seems to be no malafide intention on the part of the appellant to avoid service tax liability which attracted the provisions of Section 73 (4) of the Finance Act, 1994. If that be so, we find that having discharged the service tax liability before issuance of the show cause notice, Board Circular No. 137/167/2006-CX-4, dated 03.10.2007 would come to the rescue of the appellant, which means that appellant had finally concluded the proceedings; we find that on a similar issue, Hon'ble High Court of Bombay in the case of Galaxy Construction Pvt. Ltd. [2017(48) S.T.R. 37 (Bom.)] has held that provisions of Section 73(3) will apply and the proceedings are to be considered as concluded and penalties are unwarranted. While doing so, their Lordships followed the decision of Hon'ble High Court of Karnataka in the case of Adecco Flexione Workforce Solutions Limited [2012(26)STR 3(Kar.)].

6. As we have already recorded that there seems to be no malafide intention on the part of the appellant in avoiding the payment of service tax, we hold that the ratio of the judgments of Hon'ble High Courts of Bombay and Karnataka (supra) will apply in the case in hand and accordingly we set

aside the impugned order that imposed penalties under sections 76, 77 & 78 of the Finance Act, 1994.

7. Impugned order is set aside and appeal is allowed to that extent.

(Dictated and Pronounced in open Court on 18.12.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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