

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court - I

APPEAL No. ST/586/2010

*(Arising out of **Order-in-Original** No. 55/2009-ST, dated 31.12.2009 passed by
CCCE&ST, Hyderabad-II)*

VAHINI CABS .. APPELLANT
Vs
CCE,C&ST, Hyderabad-II .. RESPONDENT

Appearance

Mrs. Aparajitha, Advocate for the Appellant.

Shri V.R. Pawan Kumar, Superintendent/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: 27.12.2018

Date of Decision: 27.12.2018

FINAL ORDER No. A/31636/2018

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

1. This appeal is directed against Order-in-Original No. 55/2009-ST, dated 31.12.2009.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the issue is regarding demand of service tax liability under the category of "Rent-a-Cab" service for the period June 2002 to September 2005. It is the case of Revenue that appellant had rendered the Rent-a-cab services but not paid the service tax for the period in question. Hence, a show cause notice dated 04.01.2006 was issued demanding the service tax with interest and also for imposing penalties. Appellant contested the show cause notice on the ground that they had hired out various vehicles on kilo meter basis, hence they are not covered under the category of Rent-a-cab service for which reliance was placed on the judgments passed by Tribunal in various cases. The adjudicating authority, after following principles of natural justice, confirmed the demands raised with interest and also imposed penalties.

4. Ld. Counsel states that due to many judgments of the Tribunal during the relevant period, in favour of the appellant, the appellant had a bonafide impression that tax liability does not arise in the case in hand. It is her submission that they have already paid the service tax which has been appropriated in the proceedings by the adjudicating authority along with interest. It is her further submission that since they have paid the tax liability, penalty imposed may be set aside.

5. Ld. DR reiterates the findings of the lower authorities and submits that penalties are imposed as the appellant had not discharged the service tax liability within the time.

6. On careful consideration of the submissions made, we find that appellant has discharged the entire tax liability and interest thereof during the course of proceedings before the lower authorities. It is also taken on record that appellant is not contesting the issue on merits.

7. As regards the penalties imposed, we do find merits in the arguments put forth by Ld. Counsel that during the period in question, in this case, there were various decisions of the Tribunal stating that service tax liability will not arise under the category of Rent-a-Cab service, if the vehicles are hired out on kilo meter basis, while there were few decisions in favour of Revenue also. In our view, assessee could have entertained a bonafide belief as to non-taxability of the services. Keeping this in mind, by invoking the provisions of Section 80 of Finance Act 1994 (as it was in statute during the relevant period in question), we set aside the penalties imposed on the appellant.

8. Appeal is disposed of by upholding the service tax demand with interest, setting aside the penalties.

(Dictated and pronounced in open Court on 27.12.2018)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)