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

Division Bench
Court – I

APPEAL No. ST/171/2009

(Arising out of **Order-in-Original** Adjudication Order No. 10/2008 (ST) (PNR), dated 21.11.2008 passed by CCCE&ST, Tirupati)

J B Security & House Keeping Services	..	APPELLANT
	Vs	
CCCE & ST, Tirupati	..	RESPONDENT

Appearance
Shri R. Muralidhar, Advocate for the appellant

Shri N. Bhanu Kiran, 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: 15.01.2019
Date of Decision: 28.01.2019

FINAL ORDER No. A/30117 /2019

[Order per: Mr. P. Venkata Subba Rao)

1. The appellant is a proprietary firm providing security services and had taken service tax registration and has been paying service tax and filing returns. For the period 2003-04 to 2006-07, their records were audited by the department and it was found that the service tax paid by them was not

correct and the turnover shown in the ST-3 returns did not match the balance sheet figures. It was noticed during audit that the income shown in the income tax returns and as per the P&L accounts and balance sheet was much higher than what was shown in the ST-3 returns. Ld. Counsel submits that during the period under consideration, service tax was payable only on the actual receipt and not on accrual basis, whereas the income tax returns and balance sheets were prepared on accrual basis. Therefore, there will always be a difference between the two. Further, he submits that the proprietary firm is run by a retired Havaldar of CISF who is not well educated or conversant with the provisions of service tax and hence this work was entrusted by him to a clerk. It appears that the clerk has not taken the full value of the services charged by their client in preparing the returns but only took some portion of which after deducting the salaries paid to their security guards etc. He further submits that a large amount of money was due to them at that time from their clients such as Reliance Group, because of which their difficulty in discharging the service tax. Unless the amounts were received, they were not liable to pay service tax during the relevant period. When the Range Superintendent asked them for details, appellant submitted a letter dated 12.11.2007, giving full work sheet showing the service tax after giving cum service tax benefit. A show cause notice was issued on 29.04.2008 demanding service tax of Rs. 83,38,746/- and they had paid the full amount before the issue of show cause notice. It is erroneously recorded in the show cause notice that they had paid only Rs. 20,00,000/- before issue of show cause notice. Thereafter, they also paid the interest amount of Rs. 19,52,437/- on

01.08.2008 during the course of adjudication. Ld. Counsel submits that they are not contesting either the demand of service tax or interest, both of which they have paid in full as demanded by the department. The Adjudicating authority has imposed penalty under section 78, equivalent to the amount of duty and also imposed a penalty under section 77 of Rs. 1,000/- for contravention of the provisions of the Finance Act 1994 and the rules made there under. Ld. Counsel prays that these penalties may be set aside by invoking the provisions of Section 80, for the following reasons:

(a) The assessee was not very well educated or familiar with the provisions of the service tax and hence made mistakes.

(b) At any rate, they have not received the full amounts indicated in their income tax returns and P&L accounts and during the relevant period, they were legally required to discharge the service tax liability only on receipt of the amounts.

(c) Notwithstanding the above legal position, when the demand was raised, they had paid full service tax before issue of show cause notice and the interest during the process of adjudication itself.

2. Ld. DR does not dispute the facts of the case. He further argues that the appellant firm is providing the services to large companies and is aware of the provisions of service tax and that they had intentionally not paid the

service tax until they were caught hold by audit. Merely because they paid the service tax and interest, either during the adjudication or prior to issue of show cause notice, it would not be a reasonable cause as required under section 80 to waive the penalties. He relies on the order of the Tribunal in the case of Central Investigation and Security Services Limited [2018 (9) GSTL 409 (Tri.-Chennai)] in support of this contention.

3. We have considered the arguments on both sides and perused the records. Although the appellant initially disputed the service tax liability on the ground that they had not yet received the amounts from their clients, that they paid the full amount of service tax as demanded and interest. Ld. Counsel only prays for setting aside the penalties invoking the provisions under section 80 on the ground that they have a reasonable cause. Ld. DR contends that payment of service tax or interest during the adjudication or even prior to issue of show cause notice is not a reasonable cause for invoking section 80 for waiving the penalties. In this case, we find that the appellant is a retired Hawaldar of CISF and it would not be unreasonable to expect that he may not be fully aware of the provisions of service tax Act. We also find force in the argument that service tax was not due immediately on providing service because they had not yet received the payments while the income tax and balance sheets were on accrual basis. The appellant had paid the service tax as demanded along with interest. In this factual matrix, we find that the appellant herein had a reasonable cause for the failure to pay the service tax. Therefore, invoking the provisions of Section 80, we waive the penalties imposed on appellant. In conclusion, the

confirmation of demand and interest is upheld and the penalties imposed under sections 77 & 78 are set aside.

4. The appeal is disposed of as indicated herein above.

(Pronounced in open court on 28.01.2019)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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