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

Single Member Bench - Court – I

Service Tax APPEAL No. 2376 of 2011

(Arising out of **Order-in-Appeal** No. 5/2011 (H-I)ST, dated 31.03.2011 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-I), Hyderabad)

P. Kistaiah .. **APPELLANT**
24-49, Ashoknagar,
Kakatiyanagar,
Ramachandrapuram,
Medak District
Telangana – 502 302

VERSUS

Commissioner of Central Excise, Customs & Service Tax, .. **RESPONDENT**
Kendriya Shulk Bhavan,
L.B. Stadium Road, Basheerbagh,
HYDERABAD 500004.
Telangana

Appearance

Shri V.A.A. Ravi Kumar, Advocate for the Appellant.

Shri A.V.L.N. Chary, Superintendent /AR for the Respondent.

Coram: **Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER No. A/30475/2019

Date of Hearing: 15.04.2019
Date of Decision: 15.04.2019

[ORDER PER: MR. P. VENKATA SUBBA RAO)

1. This appeal is filed against Order-in-Appeal No. 5/2011 (H-I)ST, dated 31.03.2011. The facts of the case in brief are that the appellant herein is a

provider of manpower to various firms. It is not in dispute that he was liable to pay service tax under "Manpower Recruitment or Supply Agency" under section 65 (68) of the Finance Act, read with Section 65(105) of the Finance Act, 1994. He had not discharged the service tax liability during the relevant period. Later, realising that he was liable to pay service tax, he obtained Service Tax registration on 31.08.2007 and paid the full amount of service tax along with interest in instalments, from time to time. Therefore, summons were issued to the appellant on 26.06.2009 under section 14 of Central Excise Act, 1944 read with Section 83 of the Finance Act, 1994. His statement was recorded on 30.06.2009. The show cause notice indicates that prior to recording his statement itself, the entire amount of service tax along with interest was paid through various challans by the appellant between 21.11.2007 to 29.06.2009. Thereafter a show cause notice dated 20.10.2009 was issued proposing to recover an amount of Rs. 22,35,924/- as service tax (including Education Cess) and appropriate the amount already paid by him towards service tax. It was also proposed to charge interest of Rs. 1,04,603/- under section 75 and appropriate the amount already paid by him as interest against this amount. It was also proposed to impose penalties under sections 76, 77 & 78 of the Finance Act, 1994 on the appellant. After following due process, the lower authority in the impugned order confirmed the demand and interest as proposed and appropriated the amounts already paid by the appellant towards this account. He also imposed penalty of Rs.5,000/- under section 77 and imposed a penalty of Rs. 22,35,924/- under section 78 of the Finance Act, 1994.

2. Aggrieved, the appellant appealed to the first appellate authority praying for waiver of the penalties invoking Section 80 of the Finance Act, 1994 as applicable during the relevant period. The first appellate authority upheld the order of the lower authority and rejected the appeal. Insofar as the request for waiver of penalty under section 80 of the Finance Act, 1994 is concerned, he held that where there was suppression of facts by the appellant, penalty is invokable, relying upon the following case laws:

(a) Agarwal Agency vs. CCE&ST, Patna [2010(17)STR 578 (Tri.-Kolkata)

(b) Kongu Engineering College vs. CCE Salem [2009(16)STR 578 (Tri.-Chennai)

(c) Raisoni Tyres Pvt. Ltd. vs. CCE&C, Nasik [2010(18)STR 766 (Tri.-Mumbai)

(d) Gora Mal Hari Ram Ltd. vs. CST, New Delhi [2010(18)S.T.R. 492 (Tri.-Del.)]

3. Ld. Counsel for the appellant submits that they are only seeking waiver of penalty under section 80 and are not disputing the liability of service tax or interest both of which were paid even before the issuance of show cause notices or even before their statement was recorded. He would further argue that the reasoning given and the case laws relied upon by the first appellate authority to not waive the penalty do not apply as the case laws were of Central Excise Act, 1944 which did not have a provision corresponding to Section 80 of the Finance Act, 1994 for waiver of penalty. Therefore, his logic that when extended period of limitation can be invoked and the penalty must necessarily follow, is not correct.

4. Ld. DR reiterates the findings of the lower authority.

5. I have considered the arguments on both sides and perused the records. It is not in dispute that the appellant was liable to pay service tax and had not paid it during the relevant time. However, subsequently, having realized his tax liability, he obtained registration and paid service tax in instalments through various challans. The first statement recorded by the Department was after the service tax along with interest already paid by the appellant. In this factual matrix, I find the appellant had a reason to not to pay service tax. He was merely ignorant. His conduct does not show in any manner that he had any intention to suppress the facts from the department or to evade payment of service tax. In fact, the entire service tax along with interest was paid, albeit in instalments, even before the statement of the appellant was recorded. I, therefore, find this is a fit case to invoke Section 80 of the Finance Act, 1994 to waive penalties. Accordingly, the

impugned order is modified to the extent that the service tax and interest already confirmed are upheld and all penalties are waived of, under section 80 of the Finance Act, 1994.

6. The appeal is disposed is disposed of as indicated herein above. Appeal is allowed.

(Dictated and pronounced in open court)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

vrg