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

DIVISION BENCH – COURT NO. 1

Service Tax APPEAL No. 940 of 2010

(Arising out of **Order-in-Appeal** No. 03/2010(H-IV)S.Tax, dated 29.01.3020 passed by Commissioner of Customs, Central Excise & service Tax (Appeals-II), Hyderabad)

LIFE STYLE COMMUNICATIONS Private Limited .. **APPELLANT**
Mamatha Estate, Ist Floor,
Allwyn Colony, Miyapur,
HYDERABAD – 500 049.

VERSUS

Commissioner of Customs, Central Excise & Service Tax, .. **RESPONDENT**
Posnett Bhawan, Tilak Road, Ramkoti,
HYDERABAD – 500 001.

Appearance

Shri P. Venkata Prasad, Chartered Accountant for the appellant
Shri Arun Kumar, Jt. Commissioner/AR for the Respondent.

Coram: Hon'ble Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)
Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30538/2019

Date of Hearing: 10.04.2019
Date of Decision: 10.04.2019

[ORDER PER: MR. ANIL CHOUDHARY)

1. Heard both sides. The issue involved in this case is whether the penalties are imposable under sections 78 and 77 of the Finance Act 1994 on the appellant. The facts of the case are that the appellant was rendering the services of cable operator (MSO) where they were providing cable connection to T.V. viewers and for this they were receiving channels broadcast from the broadcasters. Some of the broadcasted channels were pay channels where the appellant was paying service tax as input service and was also availing the CENVAT Credit on service tax paid on such charges. The Department's contention is that the appellants are not paying the service tax on subsequent charges collected from the viewers and the appellant had started receiving revenue from advertising and carrier charges from the advertisers for advertising on their local channels and were also getting carriage charges from the new broadcasters. The appellant was not paying service tax on carriage charges and advertisement charges so collected. An enquiry was conducted sometime in March 2008 and a panchnama was drawn and upon perusal of the records, it was seen by Revenue that they are liable to pay service tax on the carriage charges and the revenue earned on account of broadcasting by them. Without disputing the same, the appellant made payment of service tax applicable, prior to issuance of show cause notice along with interest. Further, during the course of enquiry, statement of the Managing Director was recorded wherein he, inter-alia stated that they have not declared the income received as carriage fee in their returns. Further, they were availing CENVAT Credit on the input services and admitted that there is some error in claiming the input services. Ld. Counsel further stated that under the facts and circumstances, there is no case made out of deliberate default and it was due to lack of knowledge and interpretation of the legal provisions by the appellant.

2. Ld. DR reiterates the findings of the impugned order.

3. Considering the submissions and the contentions raised, we found that no case of deliberate defiance was made, by the appellant. Accordingly we set aside the penalty imposed under section 78.

4. Appeal is allowed in part.

(Dictated and pronounced in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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