CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 3167 of 2012

(Arising out of **Order-in-Original** No. 05/2012-Adjn.(ST)(Commr) dated 16.07.2012 passed by Commissioner of Customs, Central Excise & Service Tax, Hyderabad-II)

Aarvee Associates Architects .. **Appellant**
Engineers & Consultants Pvt Ltd.,
Ravula Residency,
Sri Nagar Colony, Hyderabad,
Telangana – 500 082.

VERSUS

Commissioner of Central Tax .. **Respondent**
Hyderabad – II
Kendriya Shulk Bhavan,
L.B. Stadium Road,
Basheerbagh, Hyderabad,
Telangana – 500 004.

APPEARANCE:
Shri Ch Nageshwar Rao, Consultant for the Appellant.
Shri M Anukathir Surya, Authorised Representative for the Respondent.

CORAM: HON'BLE Mr. ANIL CHOUDHARY (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30351/2023

Date of Hearing: 20.10.2023
Date of Decision: 20.10.2023

[Order per: ANIL CHOUDHARY]

Heard the parties.

2. The issue involved is whether penalty under Section 76 have been rightly imposed.

3. Admitted facts are that the appellant is engaged in architect services which are taxable and was also registered with the Department.

4. Show cause notice was issued dated 22.10.2010 proposing to demand Rs. 1,57,22,101/- for the period April 2009 to September 2009 which was

payable by 05.10.2009. At the investigation stage it is recorded in para 3 of Order-in-Original, the appellant had issued post dated cheques dated 15.11.2009, 20.11.2009 and 30.11.2009. Subsequently, appellant by letter dated 16.10.2009 informed Revenue that they have paid the amount of Rs. 50,20,426/- through 29 challans and were allowed to take back. One of the cheque no. 124989 dated 15.11.2009. Further, other 2 cheques were returned when the appellant informed Revenue that they have paid Rs. 1,07,01,725/- by challans. It is further admitted fact that the appellant has also paid the amount of interest for delay payment, before the issue of show cause notice under intimation to Revenue. Further, these facts are evident from the show cause notice, wherein matching amount of tax and interest is proposed to be appropriated.

5. We further find from the impugned order that the penalty under Section 76 have been imposed with the observation that the appellant deposited the tax and interest, only upon being pointed out by Revenue.

6. Assailing the imposition of penalty, Learned Counsel for appellant states that the appellant provided services to National Highway Authority (Statutory Body of the Government of India). He has further explains that it is only after the appellant deposited the tax as per invoices, only there after they are paid by the NHA (by way of reimbursement). It is not the case that the appellant after receiving the amount of tax from the service receiver, have been using them by way of working capital.

7. Having considered the rival contentions and the facts on record, we find that no case of deliberate default in payment of tax is made out. Accordingly, we hold that appellant is entitled to benefit under Section 80 of the Act. The appeal is allowed and penalty under Section 76 is set aside.

(Dictated and pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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