IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.76180 of 2018

(Arising out of Order-in-Appeal No.400/S.Tax-I/Kol/2017 dated 21.12.2017 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

M/s. C.C.I. Logistics Limited
(3rd Floor, P-4, Black Burn Lane, Kolkata-700012.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata North Commissionerate (Erstwhile Service Tax-I Kolkata Commissionerate)

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Raod, Kolkata-700107.)

APPEARANCE

Shri S.K.Goyal, Chartered Accountant for the Appellant (s)
Shri A.Roy, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75305/2021

DATE OF HEARING : 12 March 2021
DATE OF DECISION : 16 June 2021

P.K.CHOUDHARY :

The present appeal has been filed by the assessee, M/s. C.C.I. Logistics Ltd. against imposition of penalty of Rs. 23,98,177/- under Section 78 of the Finance Act, 1994 vide Order-in-Original dated 05.01.2016 passed by the Addl. Commissioner, Service Tax, Kolkata. The said penalty amount has been further upheld by the Ld. Commissioner (Appeals), Kolkata vide Order-in- Appeal dated 12.12.2018, which has been assailed by the assessee in the present appeal before me.

2. Briefly stated, the facts of the case are that the appellant is engaged in providing various taxable services for which it has obtained service tax registration. In the course of audit undertaken by CERA

audit team, a short payment of service tax was ascertained for which spot memo was issued in January 2011 for the period 2009-2010, which was immediately deposited by the appellant alongwith applicable interest under intimation to the Departmental authorities. Show Cause Notice dated 21.04.2014 (SCN) was issued to raise demand and appropriate the service tax already deposited by the appellant. The SCN also proposed imposition of penalty equivalent to service tax amount. In the course of adjudication, the adjudicating authority confirmed the demanded service tax and ordered for appropriation of the amount already deposited, with further imposition of equal penalty u/s 78. Appeal filed by the assessee against the said adjudication order remained unsuccessful. Hence, the present appeal before the Tribunal.

3. Shri S.K. Goyal, learned Chartered Accountant appeared for the appellant and Shri A Roy, learned Authorized Representative appeared for the Department.

4. The Learned Chartered Accountant for the appellant submitted that since the entire service tax amount was deposited alongwith interest immediately after the short payment of tax was informed by the CERA authorities, the question of further imposition of penalty should not arise in view of Section 73(3) of the Act. He also submitted that once the service tax amount with applicable interest is already deposited, the very SCN should not have been issued. He also submitted that the appellant is entitled to the benefit of Section 80 of the Act for waiver of the penalty amount. He relied upon the following judicial pronouncements :-

- Electro ZavodPvt. Ltd vs. CST, Kolkata (Final Order no. 77058/2019 dated 19.9.2019)
- M/s. Jain Udyog vs. Comm of CGST, Agartala (Final Order no. 76867/2019 dated 11.12.2019)

- YCH Logistics India Pvt Ltd vs. CCE, Bangalore 2020-TIOL-605-CESTAT-BANG

5. The learned Authorized Representative appearing for the Revenue reiterated the findings made by the learned Commissioner(Appeals) and submitted that the appellant assessee had willfully not paid the service tax amount and therefore, the appellant assessee is not entitled to the benefit of Section 80 of the Act. He also submitted that the penalty amount upheld in the impugned appeal order is legally correct and accordingly prayed that the same may be upheld by rejecting the instant appeal.

6. Heard both sides through video conferencing and perused the appeal records.

7. I find that penalty has been imposed by the authorities below with the finding that the appellant had not deposited service tax on the basis of own ascertainment and that it was only after the CERA audit was undertaken, the short payment of tax was detected. I find that the very SCN was issued in the year 2014 for which the compliance was already made by the appellant in 2011 by way of payment of tax and interest soon after the short payment was detected. The only allegation in the SCN is that the appellant-assessee has not deposited service tax on their own ascertainment. I find that when the tax amount stands already deposited with interest, the very SCN was not required to be issued under Section 73(3). Merely because the tax amount has been deposited on the basis of ascertainment by the Department, the assessee cannot be deprived of the benefit of aforesaid provisions, more so in view of the fact that no evidence has been adduced in the SCN that there was a deliberate short payment. Any other interpretation will render the said provision redundant inasmuch as the very intention of the said provision is to reduce litigation when compliance is made by the assessee.

8. Since the tax amount alongwith interest has already been deposited by the assessee, I do not find any reason to uphold the penalty amount in absence of evidence of fraud or suppression with an intent to evade payment of tax. Hence, the penalty imposed is set aside.

The appeal is thus allowed in above terms with consequential benefits ,if any.

(Order pronounced in the open court on 16 June 2021.)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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