

**N THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.256 of 2010

(Arising out of Revision Order NO.ST/Guwahati No.04/2009-10 dated 31.03.2010 passed by the Commissioner of Central Excise & Service Tax, Guwahati.)

M/s. Luit Coal Products Pvt. Ltd.

(At-Kamarkuchi, Sonapur, Dist.-Kamrup, Assam)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Guwahati

(Udyog Vikash Bhawan, Sethi Trust Building, 5th Floor,
G.S. Road, Bhangagarh, Guwahati, 781005,(Assam))

...Respondent

APPEARANCE :

Shri Debraj Sahoo, Advocate, for the Appellant

Shri K. Chowdhury, Authorized Representative, for the Respondent

CORAM:

HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER No. 75863/2023

Date of Hearing : 10.05.2023

Date of Pronouncement :27.06.2023

PER K. ANPAZHAKAN

M/s. Luit Coal Products Pvt. Ltd., a private Limited Company, are engaged in the manufacture of Low Ash Metallurgical Coke, Hard Coke, and Coke Breeze. The Appellants were registered under the Finance Act, 1994 under the category of Goods Transport Agency Service. Due to financial stringency the appellants could not deposit the service tax due for the period from April 05 to March, 07 in time and they were to file the Service Tax Returns in ST-3 after depositing the service tax due.

2. The appellants deposited their Service Tax dues for the period from January, 2005 to March, 2005 amounting to Rs.2,75,154/- towards service tax, Rs.5,272/- as Ed. Cess and Rs.6,269/- towards interest on 27.06.2005

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vide their TR-6 Challan dated 23.06.2005. The default in payment of service tax happened between the period April 2005 to September 2007.

3. A Show Cause Notice was issued by the Director General of Central Excise Intelligence to the Appellant alleging that they had failed to pay the appropriate service tax during the period 1st January, 2005 to March 2007. The Notice also proposed to appropriate the amount of Service Tax voluntarily deposited by the appellants amounting to Rs.23,50,1365/- towards their service tax liability and Rs.47,824/- towards Ed. Cess interest amounting to Rs.4,32,069/- and refrained from imposing penalty on the Appellant. Being aggrieved by the impugned Order-in-Original dated 17/02/2009 passed by the adjudicating authority, Ld. Commissioner, reviewed the impugned Order-in-Original, in exercise of the power conferred on him under Section 84 of the Finance Act, 1994.

4. The Ld. Commissioner, rejected the submissions of the Appellants and confirmed a demand of Rs.26,10,337/- and appropriated Rs.23,50,136/- already paid by them and ordered to recover the differential amount of Service Tax Rs.2,60,201/- and Education Cess of Rs.4,383/-. The present appeal is filed by the Appellant is against this Revision Order passed by the Commissioner.

5. In their submissions, the Appellant contended that the impugned Revision order was passed by the Ld. Commissioner without considering facts and circumstances of the case and confirmed the demand and imposed penalty. The Ld. Commissioner failed to appreciate that the delay in payment of Service Tax was due to acute crisis of funds in the hands of the Appellant. Further, the Appellant voluntarily took the Registration under Section 69 of the Finance Act, 1994 read with Rule, 4 of the Service Tax Rules, 1994. The Appellant had voluntarily deposited the Service Tax dues for the period from January, 2005 to March, 2005 along with interest in discharge of their Service Tax liability without suppressing any material facts to the department. The

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delay in payment of Service Tax for the subsequent periods i.e. from April 2005 to September 2007 was due to non release of Transport Subsidies from the Central Government which was beyond the control of the appellant and due to the delay in disbursement of the Transport Subsidy, the financial position of the Appellant deteriorated drastically causing delay in payment of Service Tax in time. Under these circumstances, the Appellant had a reasonable ground for the delay in payment of Service Tax and hence no penalty imposable on them. The Appellant referred the provisions of Sec.80 of the Finance Act, 1994 which reads as "Notwithstanding anything contained in the provisions of Sec. 76, Section 77 or 78, no penalty shall be imposable on the assessee for any failure referred to in the said provisions, if the assessee proves that there was a reasonable cause for the said failure." In the instant case, the delay in payment of Service Tax was due to delay in disbursement of Transport Subsidy which was a substantial amount for running an industrial unit like theirs and the 'reasonable cause' being proved, the the original adjudicating authority, satisfied with the reasons for the delay in payment of service tax and waived imposing penalty on the Appellants. Accordingly, they contended that the impugned Revision Order dated 31.03.2010 is not sustainable.

6.The Appellant cited the decision of the Tribunal in the case of Catalyst Capital Services Pvt. Ltd., Vs. CCE, Mumbai-IV, reported in 2005 (182) ELT 34 (Tri-Mum),wherein it has been held that no penalty is leviable when the assessee acted in a bonafide manner.

7.The Appellant stated that they have paid their service tax liability before issue of the Show Cause Notice and the Ld. Commissioner failed to consider this aspect and imposed penalty arbitrarily. The Ld. Commissioner did not consider the Board's Letter F.No.341/18/2004-TRU, dated 17.12.2004, wherein it has been held that "in case of omission in payment of service tax or procedural lapses by any person liable to pay service tax on goods transport

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by road committed before 31st December 2005, the consequences should be limited to recovery of tax with interest payable thereon. No penalty should be imposed on such defaulters unless the default is on account of deliberate fraud, collusion, suppression of facts or willful misstatement or contravention of the provisions of service tax with intent to evade payment of service tax.” In the present case, the department has not brought in any corroborative evidence to substantiate their allegation of suppression of facts, misstatement etc.on the part of the Appellant to evade payment of service tax. The imposition of penalty is against the intention of the Board’s Circular dated 17.12.2004.

6. The Appellant relied on the decision of the Tribunal in the case of Samtel Colour Ltd. Vs. Commissioner, reported in 2008 (9) STR 197 (Tri-Del), wherein it has been held that in the absence of deliberate fraud, collusion, suppression of facts misstatement etc in payment of service tax for the period before 31.12.2005, penalty was not imposable.

7. The Ld A.R. reiterated and justified the grounds cited in the Revision Order.

8. Heard both sides and perused the appeal records.

9. We observe that the issue involved in the present case is mainly penalty imposed by Commissioner in the Revision Order dated 31.03.2010, passed under section 84 of the Finance Act, 1994. From the facts of the case, it is observed that the Appellant has taken service tax registration and paid service tax during the period January 2015 to March 2015. There was a delay in payment of service tax for the period from April 2015 to September 2007 due to non receipt of transport subsidy from the Central Government. When they received the transport subsidy from the Government they paid the service tax liability for the period from April 2005 to September 2007, along with interest voluntarily. The original authority considered the reasons cited by the Appellant reasonable and waived penalty. However, the Commissioner found

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the waiver of penalty unacceptable and reviewed the order. As per Section 84 of the Finance Act, 1994, they passed a Revision Order dated 31.03.2010 and imposed penalty. The Appellant is contesting this penalty.

10. We observe that there was a delay in payment of service tax by the Appellant for the period April 2005 to September 2007. They were paying service tax before that period and filed returns.. The Appellant attributed delay in receipt of transport subsidy from the Government as the reason for the delay in payment of service tax. We observe that the Revisionary authority has not given any finding to reject the reason stated by the Appellant for the delay in payment of service tax. Immediately on receipt of the transport subsidy from the Government they have paid the service tax along with interest. We observe that this is a fit case for not issuing show cause notice as provided under Section 73(3) of the Finance Act, 1994. Since there is no evidence available on record to establish that the Appellant has delayed the payment of service tax with an intention to evade payment of service tax, we hold that penalty under Section 78 of the Finance Act, 1994, not imposable in this case. The Appellant is liable to pay interest for the delayed payment of service tax, which they have paid. Accordingly, we hold that the impugned Revision Order is not sustainable. Accordingly , we set aside the same.

11. In view of the above discussion , we set aside the impugned Revision Order and allow the appeal filed by the Appellant.

(Pronounced in the open Court on. 27.06.2023...)

Sd/-

(P. K. Choudhary)
Member (Judicial)

Sd/-

(K. Anpazhakan)
Member (Technical)

Pinaki