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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 71208 of 2013

(Arising out of Order-in-Appeal No. 17/ST/B-I/2013 dated 21.03.2013 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Gargson Properties Private Limited **: Appellant**
A/66, Nayapalli,
Bhubaneswar – 751 012

VERSUS

Commissioner, Central Excise, Customs and Service Tax **: Respondent**
Central Revenue Building, Rajaswa Vihar,
Bhubaneswar – 751 007

APPEARANCE:

None for the Appellant

Shri Subrata Debnath, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 76408 / 2024

DATE OF HEARING / DECISION: 22.07.2024

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order seeking waiver of the penalty imposed on them under Sections 77 and 78 of the Finance Act, 1994.

2. The facts of the case are that the appellant, being an insurance agent providing insurance service to their clients, received commission from general insurance companies during the period from 2004-05 to 2008-09. An investigation was conducted and it was found that although the appellant was receiving commission from the insurance companies, was not paying Service Tax thereon.

3. As the appellant was not paying Service Tax on the commission received from the insurance companies, a Show Cause Notice dated 13.08.2009 was issued to the appellant proposing to demand Service Tax and to impose various penalties under the Finance Act, 1994.

3.1. The matter was adjudicated and the demand of Service Tax was confirmed along with interest; penalties were also imposed.

4. The appellant has paid the entire amount of Service Tax along with interest and is seeking immunity from imposition of penalty under the Finance Act, 1994 by invocation of Section 80 of the Finance Act, 1994.

5. None appeared on behalf of the appellant nor any request for adjournment has been received on their behalf.

5.1. Considering the fact that the issue is on a narrow compass, therefore, the appeal is taken up for consideration.

6. The Ld. Authorized Representative appearing for the Revenue supported the impugned order and submitted that as the appellant had admittedly not paid their liability to Service Tax for having received commission from the insurance companies, therefore, the penalties were rightly imposed on the appellant.

7. Heard the Ld. Authorized Representative for the Revenue and perused the records.

8. We find that the appellant was under a *bona fide* belief that the commission received by them would be taxable at the end of the general insurance companies

and therefore did not pay Service Tax on such commission received by them from the general insurance companies. As it was the *bona fide* belief of the appellant and there was no intent to evade payment of Service Tax on their part, therefore, we grant the benefit of Section 80 of the Finance Act, 1994 and drop the penalties imposed on the appellant under Sections 77 and 78 of the Finance Act, 1994. In view of this, the penalties imposed on the appellant are set aside.

9. In these terms, the appeal is disposed of.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd