CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.405

Service Tax Cross Application No. 86830 of 2018
In
Service Tax Appeal No. 88240 of 2018

(Arising out of Order-in-Appeal No. IM/CGST/A-1/MUM/21/18-19.dated 26/04/2018 passed by the Commissioner of Central Tax (Appeals-I), Mumbai)

M/s Ahire Security Services Pvt Ltd. ....Appellant
Shravani Bunglow, House No. 490,
Alibag Bombay Road,
Veshvi Kurud, RCF Colony, Alibag
Raigad
Maharashtra

VERSUS

C.C.E. & S.T., RAIGAD ....Respondent
4th Floor.... Kendriya Utpad Shukl Bhawan,
Plot -01... Sec. 17, Khandeshwar,
Raigad,
Maharashtra 410206

APPERANCE:

Ms Kranti Rathi with J.R. Gawde, Consultant, for the Appellant
Shri S.K. Hatangadi, Asst. Commissioner Authorised Representative for the Respondent

CORAM:

HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86584 / 2019

Date of Hearing: 09.05.2019
Date of Decision: 06.09.2019

AJAY SHARMA:

This Appeal has been filed by the Appellant challenging the impugned order dated 26/04/2018 passed by the Commissioner of

Central Tax (Appeals-I), Mumbai in Order-in-Appeal No. IM/CGST/A-1/MUM/21/18-19.

2. The facts of the case in brief are as under. The Appellant are providing security services. During the course of audit it was observed that for the period from years 2009-10 to 2013-14 the Appellant failed to pay service tax amounting to Rs. 14,44,821/- on the actual amount billed/ received from their customers under the category of "Security Agency Service" on being pointed out by Audit party, much prior to the issuance of show cause notice, the Appellant paid the amount of Rs.10,90,653/-. The show cause notice was issued on 13.10.2014 demanding the service tax amount of Rs.14,38,063/- with interest and penalty despite the fact that substantial amount has been paid by the Appellant before the issuance of show cause notice. The demand was confirmed by the Adjudicating Authority vide Order-in-Original dated 29.11.2017. On Appeal filed by the Appeal, the learned Commissioner vide impugned order dated 26.4.2018 reduced the Service Tax amount to Rs.12,48,822/- and also reduced the penalty to Rs.12,48,822/- alongwith interest on the ground that the service tax on the amount of Rs.3,19,607/- was not received by the Appellant from M/s. Radission Resort and Spa Ltd. till the date of passing of the impugned order and therefore the amount of service tax and penalty was reduced proportionately to the extent of Rs.1,89,241/- by extending the benefit of point of taxation (till June, 2011). The Appellant had filed the Appeal challenging the impugned order.

Revenue has also filed its cross-objection against the reduction of Rs. 1,89,241/- from the service tax demand as well as from the penalty amount respectively, by the learned Commissioner.

3. I have heard learned counsel for the Appellant and learned Authorised Representative for the Revenue and perused the records of the case alongwith the submissions filed by the Appellant. During the course of arguments, the learned counsel submitted that she is challenging only the 100% penalty levied by the learned Commissioner. She submitted that out of the total amount of service tax of Rs.12,4,822/- as re-determined by the learned Commissioner, the Appellant had paid the amount of Rs.10,90,653/- before the issuance of show cause and on 6.6.2018 the Appellant had paid the balance amount of service tax of Rs.1,58,169/- with interest of Rs.5,04,532/- alongwith penalty of Rs.5,000/- u/s. 77 of the Finance Act, 1994 and Rs.3,12,206/- as 25% of the penalty of Rs.12,48,822/- u/s. 78 ibid since the same had been paid within a period of 30 days from the date of receipt of the impugned order.

4. Since the Appellant is confining the challenge only towards penalty under section 78 ibid therefore I am confining this order to that extent only. The second proviso to Section 78 bid provides that where such service tax and the interest payable thereon is paid within thirty days from the date of the communication of the order determining the liability, the amount of penalty liable to be paid by such person under the first proviso to Section 78 shall be 25% of such service tax. From a perusal of the impugned order it is clear

that the demand has been reduced by the learned Commissioner to Rs.12,48,822/- from Rs.14,38,822/- on the ground that the service tax on the amount of Rs.3,19,607/- was not received by the Appellant from M/s. Radission Resort and Spa Ltd. till the date of passing of the impugned order. Rather I have been informed that till date it has not been received by the Appellant. The provision of Service Tax point of Taxation Rules prevailing during the relevant period specifically provides that the service tax was required to be paid on receipt basis and since this amount of Rs.3,19,607/- was not received by the Appellant, therefore there Appellant was not required to pay the said amount and hence the learned Commissioner was justified in extending the benefit of point of taxation (till June, 2011) proportionately to the extent of Rs.1,89,241/-.

5. I have been informed that the Appellant is a Small Service Provider with turnover below Rs. 60 lakhs and due to financial problem faced by the Appellant Service Tax was not paid on time. But this is not a valid reason for non-payment. The allegations of malafide intention and suppression of the value of taxable Service have not been substantiated by the department at any stage by producing any evidence. Accounts and statutory records were properly maintained by the Appellants but still I can’t last sight of the fact that there is delay in depositing the amount in government exchequer, so interest and penalty are leviable. The learned commissioner reduced the amount of Service Tax demanded by the amount of Rs.1,89,241/- alongwith reduced penalty by the same

amount. So the amount can be said to be re-determined by the learned commissioner and since the appellant has paid the complete reduced amount of service tax with complete interest and 25% of the amount of reduced penalty as determined by the ld. Commissioner, within thirty days from the date of passing of the impugned order, therefore in the peculiar facts of the case the benefit of second proviso to Section 78(1) of the Finance Act, 1994 can be extended to the Appellant and therefore I am inclined to modify the impugned order to the extent of reducing the amount of penalty to 25% while maintaining the impugned order in all other aspects.

6. In view of the discussions made hereinabove the Appeal filed by the Appellant is partly allowed and the cross-objection is rejected.

(Order pronounced in the open Court on 06.09.2019)

(Ajay Sharma)
Member (Judicial)

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