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**S.R. Agency Vs. Cce**

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**SooperKanoon Citation** : sooperkanoon.com/47254

**Court** : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

**Decided On :** Jun-20-2008

**Judge** : P Chacko

**Appellant** : S.R. Agency

**Respondent** : Cce

**Judgement** :

1. The appellants had rendered "Clearing & Forwarding Agent's Service" to their clients viz. M/s. ACC Ltd. during 2002 & 2003 but had not paid service tax. After investigations, the department issued show-cause notice dt. 29.3.2004 demanding service tax of Rs. 6,68,833/- from them under Section 73(i)(a) of the Finance Act, 1994 and proposing penalties on them under Sections 75A, 76, 77 & 78 of the Act. The notice also proposed to appropriate towards the above demand the amount of Rs. 5,86,804/- already paid by the party. The proposal for imposition of penalties was contested. In adjudication of the dispute, the original authority confirmed the demand of service tax and appropriated the amount already paid by the party towards such demand. Further, it imposed penalties of Rs. 500/-, Rs. 100/- per day, Rs. 1000/- and Rs. 6,68,833/- (equal to service tax) under Sections 75A, 76, 77 & 78 respectively. Interest on such tax was also demanded under Section 75.

Aggrieved, the party preferred appeal to the Commissioner (Appeals) after paying the balance amount of service tax. Obviously, the contest before the appellate authority was also against the penalties only. The ld. Commissioner (Appeals) reduced the Section 78 penalty to Rs. 80,000/- and maintained the rest of the

penalties. Still aggrieved, the party is before the Tribunal.

2. Ld. consultant for the appellants submits that Section 75A was omitted on 10.9.2004, well before the Order-in-Original was passed by the Deputy Commissioner and, therefore, he should not have imposed any penalty under that provision. As regards penalty imposed on the appellants under Section 78, the ld. consultant submits that none of the ingredients specified under that provision for a penalty was established in this case. There was not even any allegation of fraud, collusion, wilful misstatement or suppression of facts in the SCN. What was alleged was contravention of the provisions of the Finance Act, 1994 and of the Rules framed thereunder, with intent to evade payment of service tax. This allegation was upheld by the lower authorities without any justification. In this connection, the ld. consultant refers to a letter dt. 31.1.2004 of ACC Ltd. addressed to M/s. S.R.Agencies, Madurai (appellant). It is submitted that the appellants had duly acted upon their client's advice given in the above letter and had, accordingly, paid up the entire amount of tax. It is further submitted that their client had expressly offered reimbursement of the tax amount in the above letter and, therefore, there was no reason for the appellants to evade its payment to the Government. In other words, the department's allegation that the appellants had contravened legal provisions by committing default of payment of service tax with intent to evade the liability is unfounded. The ld. consultant has also referred to what he calls 'amnesty scheme'. It is submitted that, in numerous cases, this Tribunal granted the benefit of the scheme to service tax assessees. In this connection, certain decisions of the Tribunal have also been cited, one of which is CCE Bhopal v. Kamlesh Kumar Agrawal 2006 (4) STR 205 (Tri.-Del.). The so-called amnesty scheme has been related to CBEC's Circular No. 137/39/2004-Cx.4 dt.

23.9.04. I have heard the ld. SDR, who reiterates the findings of the lower authorities.

3. After giving careful consideration to the submissions, I have found a valid point in the submissions made by the ld. consultant with reference to the letter dt. 31.1.04 of the appellants' client viz. M/s.

ACC Ltd. This letter manifests the concern of M/s. ACC Ltd. (service recipient) over the nonpayment of service tax by the appellants. This letter urges that an amount of Rs. 5,86,804/- be paid towards service tax before 28.1.2004 and a copy of the relevant challan be forwarded for reimbursement. The hope of reimbursement directly emanates from this letter, for the appellants to entertain a bona fide belief that whatever service tax might be paid by them will be reimbursed by the client. In such circumstances, in my view, there is no justification for the authority to have found that the appellants had intention to evade payment of service tax. It would follow that there was no valid ground for imposition of penalty on the appellants under Section 78.

However, the appellants have not been able to make out a valid case against the penalties imposed on them under other provisions. These penalties are relatable to the period of default of payment of service tax (2002 & 2003). For this very reason, the penalty imposed on the appellants under Section 75A cannot be resisted inasmuch as that section was omitted after the said period.

4. In the result, the penalty imposed on the appellants under Section 78 of the Finance Act, 1994 stands vacated while the other penalties remain. The impugned order shall stand modified to this extent. The appeal is disposed of.

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