Joy Construction Vs. the Commissioner of Central Excise, Nagpur

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jan-19-2010

Judge : The Honourable Mr. Ashok Jindal, Member (Judicial)

Appeal No. : Appeal No. ST/96 of 2009 - Mum

Appellant : Joy Construction

Respondent : The Commissioner of Central Excise, Nagpur

Advocate for Pet/Ap. : Shri Bharat Raichandani, Advocate for Appellants. Shri T. Tiju, SDR

Judgement :

Per : Ashok Jindal

This appeal is filed by the appellant against the imposition of penalties under Section 76 and 78 of Finance Act, 1994.

2. The case of the Revenue is that during the verification of documents it has come to light that the appellants have provided services in respect of Erection, Commissioning and Installation viz. installation of electrical and electronic devices, including wires or fittings thereof with effect from 16.06.2005 but they have not obtained registration for the same. On verifying the payment of service tax particulars it was observed that in respect of erection, commissioning and installation services they are not paying their service tax on the correct assessable

value in as much as the value on which they have paid their service tax does not tally with the figures appearing in their balance sheet. Their TDS / WCT certificates have being checked, the S.T.3 returns to arrive at the correct taxable value on which the service tax ought to have been paid by the assessee. It was observed after verification that the assessee had short paid service tax amounting to Rs.2,41,249/-. The Revisional authority has observed that the appellant has suppressed the taxable value during the relevant period which amounts to evasion of service tax and imposed penalties under Section 76 and 78 of the Finance Act, 1994.

3. Aggrieved by the same the appellant is before me.

4. Shri Bharat Raichandani, learned Advocate appearing for the appellant submits that although the appellant has paid the Service Tax as asked by the department and is not contesting the service tax liability but submitted that the appellants are having annual contract for maintenance of lighting in CHP Plant of MSEB and the annual contract for maintaining the service of erection, commissioning and installation are not covered in the category of service Erection, Commission and Installation. He further submitted that the appellant being illiterate person, paid the service tax although he was not liable to pay the same. He further submitted that he has obtained the registration certificate from the Service Tax department under the category of maintenance or repair services. He was discharging service tax liability regularly. He further submitted that if at all the service tax liability is fastened on the appellant the benefit of Section 80 of the Finance Act has to be given to the appellant. To support his contention he placed reliance on D.R. Gade vs. CC, Nasik 2006 (2) STR 205 (Tri. Mumbai) wherein this Tribunal has held that the appellant being a small tax payer, revision of penalty equivalent to tax amount by Commissioner is unduly harsh on him and the same was confirmed by the Hon’ble High Court of Bombay as reported in 2008 (9) STR 348 (Bom.). He further relied on AR Ashish V. Patil vs. CCE, Nashik 2006 (3) STR 184 (Tri. Mum.) wherein this Tribunal has held that the appellant being a small tax payer, enhancement of penalty unduly harsh and the same was confirmed by the Hon’ble High Court of Bombay as reported in 2008 (10) STR 5 (Bom.) He further relied on CCE vs. State Bank of India 2009 (14) STR 148 (All.) wherein the Hon’ble High

Court of Allahabad held that we find under Section 80 of the Finance Act upon establishing a reasonable cause for the said failure to deposit service tax within stipulated period, the penalty can be waived.

5. On the other hand the learned SDR submitted that although the learned Advocate has agitated the service tax liability but now in this appeal he is only contesting the penalty aspect. For service tax liability when the appellant has admitted the same, the learned SDR reiterated the impugned order for the penalty aspect only.

6. Heard both sides.

7. On careful consideration of the submissions made by both the parties, I am of the opinion that as the appellant being a small contractor, doing the work of annual maintenance of lighting in CHP Plant area is not aware of the legal provisions of the service tax and the appellant has paid the service tax without any protest. Accordingly, I take lenient view and giving the benefit of Section 80 of the Finance Act, 1994 and I have also considered the reliance placed by the learned Advocate which are squarely applicable to the case of the appellant. Accordingly, I set aside the impugned order for penalty. The penalty demand has been waived.

8. In the above terms the appeal is disposed off.