C.C.E., Lucknow Vs. M/S Awadh Transformers Pvt. Ltd.(Engineering Division) and Others

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jan-05-2010

Judge : The Honourable Mr. M. Veeraiyan, Member (Technical)

Appeal No. : Service Tax Appeals No.474, 475, 476 of 2009-SM with Cross-Objections No.155, 156, 157 of 2009-SM

Appellant : C.C.E., Lucknow

Respondent : M/S Awadh Transformers Pvt. Ltd.(Engineering Division) and Others

Advocate for Pet/Ap. : Shri S.N. Srivastava, Authorized Departmental Representative (SDR) for the Revenue and none for the respondents.

Judgement :

Per M. Veeraiyan:

These three appeals by the Department arise out of a common order in appeal No. 64-ST/LKO/09 dated 25.2.2009. The three cross-objections are connected to these three appeals. In all the three appeals, the respondent is the same being three different units of the same legal entity namely, M/s Awadh Transformers Pvt. Ltd.

2. None appears for the respondents in spite of notice. Heard the learned SDR.

3. The relevant facts, in brief, are that the officers visited the premises of respondents on 3.4.07 and noticed that the respondents have been availing the services of goods transport agency for receipt of their inputs and despatch of final products and in respect of freight paid by them, they have not discharged service tax liability. Service tax involved amounting to Rs.50,328/-, Rs.13829/- and Rs.1,226/-, in respect of unit -I, Unit -II and Engineering Division respectively have been paid along with interest before issue of show cause notice. Show cause notice was issued on 24.4.08 and original authority in addition to confirming the demand of service tax and interest already paid, imposed equal amounts as penalties under Section 76 and also equal amounts as penalties under Section 78 on each of the above units. In addition, he has also imposed a penalty of Rs.10,000/- on each of the units as late fee. Commissioner (Appeals), on appeal, by the respondents dropped penalty imposed under Section 76 of the Finance Act, 1994 and taking note of the fact that the entire amount of service tax and interest was paid before issue of show cause notice reduced the penalties imposed under Section 78 to 25% of the penalties imposed on each of the units.

4. Learned SDR reiterates the grounds of appeal.

5. I have carefully considered the submission of the learned SDR and the grounds of cross-objections. It is noticed that the penalties have been imposed for service tax which have not been paid in connection with goods transport agency service. The person liable to service tax in respect of goods transport agency services could be either the service tax provider or the person who despatched the goods using the service or the person who received the goods so despatched. Thus, there was scope for misunderstanding as to who was liable to pay service tax. In the present case, the officers visited the premises of the respondents on 3.4.07 and immediately, on their pointing out that the liability is on the recipient, the respondents have promptly paid service tax amounting to Rs.50,328/-, Rs.13,829 and Rs.1,226/- in respect of their unit -I and Unit - II and Engineering Division respectively. They have also paid interest. The show cause notice was issued on 24.4.08. The original authority has held that case calls for leniency as the

respondents have paid service tax along with interest before issue of show cause notice. The Commissioner (Appeals) taking the entire facts and circumstances into account held that it is not a case for imposition of penalties both under Sections 76 and 78. Considering the nature of dispute, considering the quantum of the service tax involved and considering the fact that the respondents promptly paid service tax along with interest, Commissioner (Appeals) reduced the penalties under 78 to the extent of 25% of service tax involved and also set aside the penalties under Section 76 and the decision by him cannot be held unreasonable. Unlike in the case of Central Excise Act, the penalties imposable under Section 76, Section 78 of Finance Act, 1994 are not mandatory in as much as the same are to be moderated in terms of Section 80 of the Finance Act, wherever necessary.

6. In view of the above, I hold that there is no merit in the appeals by the Department.

7. Therefore, the appeals by the Department are rejected. Cross-Objections which are merely in support of the order of the Commissioner (Appeals) are also disposed of.