THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

C.E.A Nos.36 and 40 of 2015

DATE: 22.04.2015

Between:

The Commissioner of Customs,
Central Excise & Service Tax,
Guntur.

… Appellant
(in both the appeals)

And

M/s. Narasaraopet Municipality,
Narasaraopet,
Guntur.

… Respondent
(in both the appeals)

This Court made the following:

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

C.E.A.Nos. 36 and 40 of 2015

COMMON JUDGMENT: (per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

Both the appeals are sought to be preferred and admitted against the common judgment and order of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore, dated 06.05.2014, by which the learned Tribunal has been pleased to set aside the imposition of penalty.

These appeals are sought to be preferred on the following suggested questions of law:

a. Whether the Hon'ble CESTAT, Bangalore is justified in giving relief to the respondent from the payment of penalties under Sections 76, 77 and 78 of Finance Act, 1994 without going into the merits of the case as to why penalty has been imposed by the original adjudicating authority?

b. Whether the Hon'ble CESTAT, Bangalore is justified by not disclosing the cause for exonerating penalty for each breach of Rule position under Section 76, 77 and 78 of Finance Act, 1944?

c. Whether the Hon'ble CESTAT, Bangalore is justified without bringing out proper reasons for invoking Section 80 and merely stating that "Government of AP was trying to get exemption and that the appellant is a municipality" is not at all a valid reason to dispose off the case?

d. Whether the Hon'ble CESTAT, Bangalore is justified in stating that no need for imposition of penalty under

Section 76 of Finance Act, which stipulates imposition of penalties for failure to pay Service tax in time as the assessee did not pay the ST in time knowing very well that the Service tax is payable on the services of Sale of Space & Time and Renting of Immovable Property?

e. Whether the Hon'ble CESTAT, Bangalore is correct by waiving the penalty under Section 77 of Finance Act, 1944, as the respondent had not taken registration in time under the category of sale of space or time for advertisement and Renting of immovable property?

f. Whether the Hon'ble CESTAT, Bangalore is correct in waiving the penalty under Section 78 of Finance Act, 1944, as the respondent had as the appellant has suppressed the value of service tax under the two categories of sale of space or time for advertisement and Renting of Immovable property in order to evade payment of Service Tax?

Learned counsel for the appellant argues, referring to the judgment of the Supreme Court in ***Union of India v. Dharamendra Textile Processors***[1]***,*** that the Tribunal has no power to dispense with the payment of penalty altogether.

We are unable to agree with the submission of the learned counsel as for a case of this nature, provision of penalty has been provided under Section 76 of Finance Act, 1994 (for short 'the Act'). We think that Section 76 of the Act has to be read with Section 80 of the Act, which is set out here under:

> "**80. Penalty not to be imposed in certain cases**
>
> Notwithstanding anything contained in the provisions of section 76, section 77 or section 78, no penalty shall be imposable on the assessee for any failure referred to in the said provisions, if the assessee proves that there was reasonable cause for the said failure."

It is clear that the words "notwithstanding anything" contained in the said Section override the provisions of Sections 76, 77 and the first proviso to sub-Section (1) of Section 78 of the Act. Therefore, power to set aside the penalty is given to the Tribunal if there is a reasonable cause. In this case, factually the learned Tribunal recorded as follows:

"Having regard to the facts and circumstances discussed above, following the earlier decisions, we set aside the penalties imposed on the appellant in their entirety taking a view that appellants are eligible for the benefit of provisions of Section 80 of the Finance Act 1994."

Before that, it was also recorded by the learned Tribunal the fact that entire amount of service tax has already been recovered by the Revenue Authorities and that the assessee expressed its willingness to deposit the service tax with interest.

Since the entire amount has already been recovered, there is no liability on the appellant. These reasons perhaps impelled the learned Tribunal to invoke provisions of Section 80 of the Act. Moreover, the learned Tribunal has followed its earlier decisions on the same point and those orders are not stated to have been challenged before any Court of law.

Under these circumstances, we do not think that the learned Tribunal exercised the power under Section 80 of the Act irrationally or capriciously. Therefore, we do not find any element of law to decide in this matter.

The appeals are accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No costs.

K.J. SENGUPTA, CJ

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SANJAY KUMAR, J

Date: 22.04.2015
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[1] 2008 (231) E.L.T. 3(S.C)