IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

Central Excise Appeal No. 15/2017

APPELLANT:- The Commissioner Central Excise, Commissionerate Wardha Central Excise Building, Telangkhedi Road, Civil Lines, Nagpur.

VERSUS

RESPONDENT:- Maharashtra State Seed Certification Agency, Administrative Building, Opp. Nilkanth Sahkari Soot Girni National Highway No.6, Shivani, Akola - 444004

Shri Kunal K. Nalanwar, Advocate for Appellant.

CORAM : M.S. SANKLECHA & MANISH PITALE, JJ.

DATE : 08.06.2017.

P.C.:-

1. This appeal under Section 83 of the Finance Act, 1994 (Act) read with Section 35-G of the Central Excise Act, 1944 challenges the order dated 6th October, 2016 passed by the learned Customs Excise and Service Tax Appellate Tribunal, WZB, Mumbai (Tribunal). The impugned order dated 6th October, 2016 of the Tribunal while confirming the demand of service tax for the period of 1st April, 2006 to 31st March, 2007 under the head of "Technical Inspection and Certification Agency Services" deleted the penalties imposed under Section 76, 77 and 78 by invoking Section 80 of the Act.

2. The appellant – Revenue has proposed the following question of law for our consideration:-

A. Whether the Tribunal is legally correct in setting aside the penalties imposed under Sections 76, 77 and 78 of the Act, 1994 when the provision of Section 80(1) is not fulfilled in this case?

3. The Respondent – Assessee is a body registered under the Societies Registration Act, 1980 and controlled by the Government of Maharashtra. It carries out the activities of technical inspection and certification of seeds under the Seeds Act, 1966 and Rules made thereunder. It is only certification of seeds by the Respondent – Assessee that seeds are marketable.

4. On 27th November, 2006, the Appellant - Revenue had issued a show cause notice demanding service tax from the Appellant – Assessee for the period 1st April, 2003 to 31st March, 2006 on the ground that the activities of certifying the seeds amounts to service under the head "Technical Inspection and Certification Agency Services". The Respondent - Assessee resisted the above notice but to no avail. The issue went up to the Tribunal resulting in decision reported in 2015 (37) STR 655 (Maharashtra State Seed Certification Agency vs. C.C.). In the above case, the Tribunal while setting aside the demand for the extended period of limitation, also set aside the penalties imposed under Section 76, 77 and 78 of the Act. This by

holding that there was reasonable cause for the failure to pay service tax. This bona-fide belief that no tax is payable was on the basis that on 1st August, 2006, the Commissioner of Service Tax, Ahemdabad had clarified to Gujarat Seeds Certification Agency that no service Tax was payable in respect of the activities of certifying the seeds under the heads of "Technical Inspection and Certification Agency Services". Further the fact that Assessee is an organization controlled by the Government of Maharashtra also weighed with the Tribunal while deleting penalties by invoking Section 80 of the Act. Moreover, the order also records understanding of the respondent that the activities of certification of seeds was a sovereign function therefore not taxable. In view of the above, the penalties imposed were deleted by invoking Sections 80 of the Act. This is so as there was reasonable cause for not having paid the service tax.

5. The present proceedings leading to the impugned order are for a period subsequent to the period covered by an order of Tribunal in the Respondent – Assesee case as reported in 2015 (37) STR 655(Tri-Mum) (supra) case. The present proceedings cover the period of 1st April, 2006 to 31st March, 2007. The impugned order dated 6th October, 2016 of the Tribunal records the fact that the earlier order rendered on 4th April, 2014 as reported in 2015 (37) STR 655(Tri-Mum) was not shown to have been challenged in appeal. Therefore, the impugned order following the earlier order of the Tribunal in respect of the same

Assessee invoked Section 80 of the Act so as to delete the penalties imposed under Sections 76, 77 and 78 of the Act for the period 1st April, 2006 to 31st March, 2007.

6. Mr. Nalanwar learned counsel appearing for the revenue submits that penalty is imposable in the present facts as the Respondent – Assessee had in-fact collected service tax in respect of its activities with effect from 1st April, 2005 onwards. Therefore, no occasion to apply/invoke Section 80 of the Act can arise.

7. We find that the distinction sought to be made by the revenue on the basis that in the present proceedings the Respondent – Assessee had collected service tax with effect from 1st April, 2005 is no distinction. This for the reason that the earlier order of the Tribunal as reported in 2015 (37) STR 655(Tri-Mum) (supra) in respect of the same Assessee also records the fact that the Respondent – Assessee herein in collecting service tax with effect from 1st April, 2005. Therefore, even after recording the above facts- the penalties imposed under Sections 76, 77 and 78 had been deleted by invoking Section 80 of the Act.

8. Therefore, the situation in the present facts leading to the impugned order emanating from the show cause notice dated 22nd October, 2007 would also be governed by the reasoning given by the Tribunal in its earlier order in respect of the same Respondent –

Assessee as reported in 2015 (37) STR 655(Tri-Mum) (supra). No distinguishing feature in the present case from that existing in the earlier case as reported in 2015 (37) STR 655(Tri-Mum) (supra) have been shown to us, which would warrant taking a different view. This is more particularly for the reason that earlier order dated 4th April 2014 of the Tribunal reported in 2015 (37) STR 655(Tri-Mum) (supra) on identical facts has been accepted by the Revenue.

9. In the above view, the proposed question does not give rise to any substantial question of law as the same is governed by an earlier order of the Tribunal on identical facts which has not been challenged by the Revenue.

Accordingly, the appeal dismissed. No order as to costs.

(MANISH PITALE, J). **(M.S.SANKLECHA, J.)**

Gohane