IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12-01-2017

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G. RAMESH
AND
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

C.M.A.No.1125 of 2011

M/s. K. Gopalakrishnan
Proprietor
Sri Kamatchi Mahal
134-C, Arcot Road
Saligramam
Chennai 600 093 ... Appellant / Petitioner

Vs.

The Commissioner of Central Excise
MHU Complex
No.692, Anna Salai
Nandanam
Chennai 600 035 ... Respondent / Respondent

Civil Miscellaneous Appeal under Section 35G of the Central Excise Act, 1944 against the CESTAT's final order No.949 of 2010 dated 03-09-2010.

For appellants :: Ms. Radhika Chandrasekar

For respondents:: Mr.A.P.Srinivas,Senior Standing Counsel

JUDGMENT

(Dr. ANITA SUMANTH,J.)

This appeal challenges the confirmation of penalties under Sections 76, 77 and 78 of the Finance Act, 1994(in short 'Act'). The assessee is a proprietorship which had registered itself as a Mandap Keeper in terms of the Act. A show cause notice was issued, after an investigation, on 27.03.2007, to the effect that the receipts relating to amenities furnished at the Mandap had not been offered to tax. The show cause notice proposed the levy of service tax along with interest and penalties under sections 76, 77 and 78 of the Act for contravention of the provisions of Section 68 as well as suppresion of facts and nondeclaration of the correct value of service tax with intent to evade payment of appropriate tax.

2. An order-in-original dated 21.10.2008 was passed by the Assistant Commissioner of Service Tax confirming the levy of service tax, but dropping the proposal for levy of penalties under Sections 76, 77 and 78 of the Act.

3. The assessing authority took into account the statements of the assessee to the effect that he was 59 years old at that particular time and medically unfit on account of an accident. It was also specifically noted by the Officer that when the lapse was pointed out to the assessee at the time of inspection on 17.05.2007, he had immediately came forward to pay the differential service tax and co-operated fully in all proceedings in this regard. The proceedings for levy of penalty were thus dropped by the assessing officer on application of mind to the facts and circumstances involved.

4. The Commissioner of Service Tax, pursuant to a revision notice revised the order of the assessing authority being of the view that the proposal for the levy of penalty ought to have been confirmed by the authority. The order of revision passed by the Commissioner in terms of Section 84 of the Act has been confirmed by the CESTAT, against which the assessee is before us in appeal.

5. A perusal of the order of the assessing authority would reveal that the dropping of proceedings for the levy of penalty is not without basis. The Assessing authority has applied his mind to the proposal in the Show Cause Notice, the explanations tendered by the assessee and examined case-law to come to the considered view that the proposed levy should be dropped. The proposal for revision under Section 84 of the Act has been confirmed by the CESTAT on the ground that the charges for amenities was liable to be included for taxation. However, neither the Commissioner (Appeals) nor the CESTAT record a finding to the effect that there was suppression with the intent of evading tax. A bonafide omission will not lead to a conclusion of suppression under Section 78 of the Act. It is a settled proposition that intention of the assessee to suppress must be established in the absence of which no penalty will lie under under Section 78 of the Act.

6. In this view of the matter, we allow the appeal reversing the order of the CESTAT and cancel the levy of penalty.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

glp

To

1. The Customs, Excise and Service tax Appellate Tribunal
South Zone Bench, Shastri Bhavan Annex
1st Floor, No.26, Haddows Road
Chennai - 600 006

2. The Commissioner Of service Tax,
692, Annasalai,
MHU Complex, Nandanam,
Chennai-35.

+1cc to Mr.Vaitheeswaran, Advocate, S.R.No.3009
+1cc to Mr.Srinivas, Advocate, S.R.No.3527

C.M.A.No.1125 of 2011

GJII(CO)
RS(25/04/2017)