IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CENTRAL EXCISE APPEAL NO. 09 OF 2016

Commissioner of Customs, Central Excise
and Service Tax, Aurangabad .. Appellant

Versus

M/s. Tekcare India Pvt. Ltd. , Aurangabad .. Respondent

Smt. Kalpalata Patil Bharaswadkar, Advocate for the Appellant.

CORAM : S.V. GANGAPURWALA AND
A. M. DHAVALE, JJ.
DATED : 28th February, 2018

PER COURT:

. The present appeal is confined to the extent of non levy of penalty under section 80 of the Finance Act, 1994.

2. Mrs. Bharaswadkar Patil, the learned advocate for the appellant submits that ignorance of law cannot be an excuse for non payment of tax. The non payment of tax and/or short payment of tax would attract penalty. The learned advocate submits that the authorities below have

failed to consider in its proper perspective the aspect of the matter involved. According to the learned counsel the provisions have not been properly interpreted by the authorities below.

3. We have considered the submissions. The show cause notice was issued to the assessee on following ground.

> ***a. the short paid of service tax amount to Rs. 72,44,266/-, Education Cess of Rs. 1,40,665/- and SHE Cess of Rs. 70,333/-) on "Management, Maintenance or Repair service" service for the period March, 09 to August, 09 should not be demanded and recovered from them under the proviso to Section 73(1) of the Act and the amount of Rs. 44,266/- (S. Tax Rs. 70,33,268/-, Education Cess of Rs. 1,40,665/- and SHE Cess of Rs. 70,333/-) paid through e-payment vide Challan No. 00232 dated 19.11.09 and 02860 dated 04.12.09 should not be appropriated against the demand.***
>
> ***b. Interest of Rs. 4,31,484/- for the delayed payment of service at an appropriate rate applicable should not be recovered as detailed in Annexure-B from them under the provisions of Section 75 of the Finance Act, 1994 for delayed payment of service tax liability and interest of Rs. 4,31,484***

paid through e-payment vide Challan No. 00233/19.11.2009, 00076/18.02.2010, 00334/19.03.2010 by the assessee should not appropriate against the demand.

c. A penalty should not be imposed upon them under Section 78 of the Finance Act, for suppressing the value of taxable service resulted in failure to pay the service tax under section 68 read with rule 6 of the Rules.

4. The show cause notice was confirmed to the extent of Para A & B, however, the adjudicating authority did not impose penalty against the assessee under section 78 of the Finance Act, 1994.

5. The Customs, Excise and Service Tax Appellate Tribunal, upheld the order and observed thus ;

In the case under adjudication, I find that there has been some misplaced confusion on the part off the tax payer notice with regard to the rate of tax changed during the currency of financial year. I find that assessee had entered into a revised agreement on 28.03.2009 which enhanced their service charges retrospectively from April 2008 and during recent past i.e. from 24.02.2009 the rate off Service Tax was payable by assessee, the same was recoverable from M/s

Videocon & the credit of the Service Tax was available to M/s Videocon. I find that due to enhancement of charges & change of rate of Service Tax in the same period, there was a reasonable cause for clerical error and short payment and that the short payment is not deliberate. Hench, I take a lenient view and waive this penalty under Sec.80, as the assessee were under bonafide belief regarding the rate of service tax.

It can be seen from the above reproduced findings, the adjudicating authority was correct in coming to the conclusion that penalty, in these kind of matters wherein question of interpretation involved, does not arise and invoking the provisions of Section 80, which in our view, is very correct and needs to be appreciated and we do so.

6. Considering the above, we do not find that the adjudicating authority and the CESTAT had committed any error in passing the order. No substantial question of law is arises. The appeal is dismissed. No costs.

[A. M. DHAVALE, J.] **[S. V. GANGAPURWALA, J.]**

ass/cea 9.16