IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO.3567 OF 2019

M/S A G SYSTEMS THROUGH ITS PROPRIETOR APURVA GIRISH KULKARNI
VERSUS
THE COMMISSIONER CENTRAL GST AND CENTRAL EXCISE AND ANOTHER
...
Advocate for Petitioner : Mr. Kolte Abhay
Advocate for Respondents : Mr. Ladda Dwarkadas S for R/1 & 2.
...

CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.
DATE : 20.06.2019

P.C. :-

The petitioner assails the judgment of the Tribunal confirming the order passed by the lower authorities.

2. Mr. Kolte the learned advocate for the petitioner submits that the present appeal is limited to the extent of penalty imposed upon the petitioner. The petitioner is entitled to the benefit of Section 80 as it stood then. Unfortunately, the case of the petitioner was not properly put-forth before the authorities and as such the authorities did not have the advantage to consider the case of the petitioner in its correct perspective. The learned advocate submits that the petitioner was under a *bona fide* belief that the amount received by the petitioner as a Sub-contractor would not be liable for tax. It is on the said belief the said amount was not disclosed, however the moment it

was pointed out that the petitioner is liable for the tax on the said amount the petitioner accepted and deposited the tax on the said amount also this would show the *bona fide* of the petitioner. The learned counsel further submits that an opportunity be given to the petitioner to represent his case before the Tribunal

3. Mr. Ladda the learned counsel for the respondents support the order of the Tribunal.

4. The Tribunal has observed that the petitioner had admitted the liability of the tax on the amount received as a Sub-contractor. However, the petitioner did not disclose the amount received to him as a Sub-contractor. The Tribunal considered the same to be a mis-declaration and also observed that the situation is not that Section 80 can be invoked.

5. Section 80 as it stood then provides that no penalty shall be imposed on the assessee for any failure referred in the said provisions. If the assessee proves that there was reasonable cause for the said failure. For an assessee to bring his case within the ambit and purview of a reasonable cause, the assessee will have to demonstrate that there are reasonable grounds to suggest that the amount received as a Sub-contractor is not liable for the service tax. Mere assumption is not sufficient. It is not that the petitioner was guided by any opinion of an expert nor it is a case that the position of law was

shaky or that petitioner was guided by some dictum of the Courts. It was merely an assumption without any sufficient cause. The same cannot be termed as a reasonable cause so as to invoke Section 80 of the Act.

6. In light of the above, we do not find any error committed by the Tribunal. No interference is called for. The writ petition is disposed of. No costs.

[MANGESH S. PATIL, J.] **[S.V. GANGAPURWALA, J.]**

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