IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 06.12.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

C.M.A. Nos.1054 and 1055 of 2019

Commissioner of GST & Central Excise
O/o the Commissioner of GST, Central Excise,Customs
& Service Tax, 6/7, A.T.D.Street
Race Course Road, Coimbatore.
... Appellant in both the CMAs

-Vs-

M/s.Jeyam Automative Limited
2, Ondipudur Road, Singanallur
Coimbatore - 641 005.
... Respondent in both the CMAs

For Appellant : Mr.A.P.Srinivas, Senior Standing Counsel
For Respondent : Mr.P.Saravana Sowmiyan

Prayer in CMA 1054/2019 & CMA 1055/2019 : Civil Miscellaneous Appeals under Section 35G of the Central Excise Act, against the common Final Order No.42481 of 2018 ,42482/18 dated 18.09.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal,South Zonal Bench,Chennai,Respectively.

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The Revenue has filed these appeals aggrieved by the common order dated 18.09.2018 passed by the learned Tribunal, setting aside the penalties under Section 76 and 78 of the Finance Act, 1994.

2. The reasons assigned by the learned Tribunal in the impugned order for setting aside the said penalties are quoted below for ready reference.

> "6.The appellant has confined the contest to the penalties imposed. In Appeal No.ST/280/2011, the penalty is imposed under Section 78 whereas in

Appeal No.ST/281/2011 the penalty imposed is under Section 76 of the Finance Act, 1994.

7.1. The Ld.Counsel for appellant has submitted that their failure to make the payment was because the appellant was under much financial crisis during the disputed period. Even in the reply to the Show Cause Notice, they have stated that the delay / default was due to severe financial crisis. That they have given priority to the day-to-day expenses including salary, electricity payment etc., so as to sustain the business. Though they made efforts to raise funds to run the company, it did not materialise due to different reasons. They were also expecting refund from income tax to the tune of Rs.133 lakhs which also did not fructify during the disputed period due to certain procedural and administrative reasons. Immediately after they got the refund from the Income Tax Department the same was used to pay the service tax liability.

7.2. It can be seen from the contentions put forward as well as the records that the appellants, though initially were paying service tax and were filing returns properly, had defaulted payment of service tax and were filing returns properly, had defaulted payment of service tax and filing of returns after 2005-06. The company was going through much financial hardship and it took some time for them to recover and for that reason, the service tax liability got accumulated. Nothing is brought out from evidence that there was any positive act of suppression with an intention to evade payment of service tax. Other than the delay caused due to financial crisis, we do not find any material to establish an intention to evade payment of service tax.

....

8. From the above discussions and following the ratio laid down in the above case laws, we are of the opinion that this is a fit case to invoke Section 80 since the appellant has put forward reasonable cause for the failure to discharge the service tax liability. We therefore set aside the penalties imposed under Sections 76 and 78 of the Finance Act, 1994 without interfering with the penalty imposed under Section 77 of the Act ibid.

9. The impugned orders are modified to the extent of only setting aside the penalties imposed under

Section 76 and 78 of the Act ibid. The appeals are partly allowed in above terms."

3. Learned counsel for the Assessee submitted that the Assessee has admittedly paid the service tax with interest, but the delay in payment of the said service tax occurred on account of financial crisis of the respondent Assessee, which has been discussed by the learned Tribunal as the reasons for setting aside the penalty in question.

4. Learned counsel for the Revenue however submitted that the Assessee collected the service tax from its customers and did not pay it in time and therefore the penalty was justified.

5. Having heard the learned counsel for the parties and having gone through the order of the learned Tribunal and the fact that the Assessee paid the service tax along with the interest in question, soon upon getting information from the Department, as noted by the Tribunal, we are of the view that setting aside of the penalty on the ground of delay in depositing the penalty was justified and therefore, the learned Tribunal has not erred in setting aside such penalty imposed upon the Assessee.

6. We do not find any question of law to be arisen for the Revenue in these appeals. The appeals are devoid of merits and are liable to be dismissed. The same is accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

KST

To
The Commissioner of GST & Central Excise
O/o the Commissioner of GST, Central Excise,Customs
& Service Tax, 6/7, A.T.D.Street
Race Course Road, Coimbatore.

2.The Commissioner,Customs, Excise and Service Tax Appellate Tribunal,South Zonal Bench,Chennai

+1cc to Mr.A.P.Srinivas , Advocate SR.No. 102290
+1cc to Mr.A.Saravana Sowmiyan , Advocate SR.No. 102300

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A.SK(20/01/2020)