IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.2630 of 2016
and
Civil Miscellaneous Petition No.18798 of 2016

Coral Crest Builders,
No.7/b, Nachimuthu Layout, I Cross,
KK Puthur, Saibaba Colony,
Coimbatore-641 038. .. Appellant/Appellant

-vs-

The Commissioner of Central Excise,
Customs and Service Tax,
6/7, ATD Street, Race Course Road,
Coimbatore-641 018. .. Respondent/Respondent

Appeal under Section 35G of the Central Excise act, 1994 to set aside the order dated 17.03.2015 made in Final Order No.40448/2015 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : M/s.P.Jayalakshmi
for J.Shankarraman.

For Respondent : Mr.K.S.Ramaswamy,
Standing Counsel

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JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal has been filed by the appellant/assessee challenging the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai (for brevity "the Tribunal"), in Final Order No.40448 of 2015, dated 17.03.2015.

2.The above appeal was admitted, on 02.12.2016, on the following substantial questions law:-

> "(i) Whether the lower authorities were right in not exercising their power under Section 80 of the Finance Act in respect of Section 78 of the Finance Act whereas the same provision is considered for Section 76 and 77 of the Finance Act?
>
> (ii) Whether in the facts and circumstances of the case, the Tribunal was right in confirming the penalty imposed under Section 78 of the Finance Act, 1944 since the entire service tax along with interest had been paid before the issuance of the show cause notice?"

3.Heard M/s.P.Jayalakshmi, learned counsel for the appellant/assessee; and Mr.K.S.Ramaswamy, learned Standing Counsel for the respondent/Revenue.

4.The short issue which falls for consideration in this appeal is whether the assessee is liable for penalty as levied by the respondent.

5.The proposal made in the show cause notice dated 27.02.2008 was confirmed in Order-in-Original, further, confirmed by the Commissioner (Appeals) in Order-in-Appeal and also by the Tribunal.

6.The learned counsel for the appellant strenuously contended that the appellant was under bona fide belief that the nature of service rendered by them will not fall under the 'service tax' head and as soon as they came to know that they are rendering service tax, they registered themselves with the Department and paid tax and therefore, the respondent should not have imposed penalty. Unfortunately, the factual scenario appears to stare against the appellant in the sense that, there is record to show that the appellant has collected service tax from its client/customer, but failed to remit the same with the Department.

7.Thus, for the above reasons, the plea of innocence and bona fides should necessarily fail. For the above reasons, we find there is no error in the order passed by the Tribunal and no question of law, much less substantial questions of law arise for consideration in this appeal.

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8.Accordingly, the appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

1.The Customs,
Excise and Service Tax Appellate Tribunal,
No.26, Sashtri Bhavan Annexe Building,
Haddows Road,
Chennai-600 006.

2.The Commissioner of Central Excise,
Customs and Service Tax,
6/7, ATD Street, Race Course Road,
Coimbatore-641 018.

3.The Commissioner of Customs, Central
Excise & Service tax (Appeals),
6/7, ATD Street, Race Course Road,
Coimbatore-641 018.

+1cc to Mr.J.Shankarraman, Advocate, S.R.No.33085
+1cc to Mr.K.S.Ramasamy, Advocate, S.R.No.33171

C.M.A.No.2630 of 2016

SV(CO)

RRS(18/06/2019)

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