



[2016] 68 taxmann.com 279 (Bangalore - CESTAT)

CESTAT, BANGALORE BENCH

K.R.S. Enterprises (P.) Ltd.

Vs.

Commissioner of Service Tax, Bangalore

SMT. ARCHANA WADHWA, JUDICIAL MEMBER

AND ASHOK K. ARYA, TECHNICAL MEMBER

FINAL ORDER NO. 20258/2016

APPEAL NO. ST/22316/2014-DB

FEBRUARY 4, 2016

CASE REVIEW

Firyland Hotels and Resorts (P.) Ltd. v. CCE [Final Order No. 50094/2014, dated 7-1-2014] (paras 4, 6); *Discovery Holdings (P.) Ltd. v. CST&ST* [Final Order No. 50208/2014, dated 21-1-2014] (paras 4, 6), *Chandresh Shantilal Shah v. CCE&ST* [Order Nos. A/11809-11812/2013, dated 19-12-2013] (paras 4, 6), *Adecco Flexione Workforce Solution Ltd.* [CEA No. 101 of 2008, dated 8-9-2011] (paras 4, 6) *relied on.*

CASES REFERRED TO

Home Solutions Retails India Ltd. v. UOI [2009] 20 STT 129 (Delhi) (para 1), *Fairy Land Hotels and Resorts (P.) Ltd. v. CCE* [Final Order No. 50094/2014, dated 7-1-2014] (para 4), *Discovery Holdings (P.) Ltd. v. CST&ST* [Final Order No. 50208/2014, dated 21-1-2014] (para 4), *Chandresh Shantilal Shah v. CCE & ST* [Order Nos. A/11809-11812/2013, dated 19-12-2013] (para 4) and *CCE&ST v. Adecco Flexione Workforce Solutions Ltd.* [CEA No. 101 of 2008, dated 8-9-2011] (para 6).

Madhava Murthy, Adv. for the Appellant. **Pakshi Rajan, AR** for the Respondent.

ORDER

Smt. Archana Wadhwa, Judicial Member - The challenge in the present appeal is to penalty of Rs 1 .17 crores imposed upon the appellant under Sections 76, 77 & 78 of the Finance Act, 1994. The appellants have already deposited the service tax in respect of renting of immovable properties before issuance of show cause notice.

2. It is seen that the issue of leviability of service tax on renting of immovable properties during the relevant period was under dispute and the matter was pending before the Hon'ble High Court of Delhi which ultimately held, in the case of *Home Solutions Retails India Ltd. v. UOI* [2009] 20 STT 129 that

renting of immovable property cannot be regarded as service. Subsequently by Finance Act, 2010, w.e.f. 01/06/2007, the renting of immovable property was made liable to service tax with retrospective effect and all the assesseees were required to deposit the service tax for the entire period in question. The appellant's contention is that in such a scenario, no mala fide can be attributed to them when they deposited the service tax before the issuance of the show-cause notice.

3. Learned advocate also referred to the provisions of sub-section (2) of Section 80 of the Finance Act, which lays down that if service tax along with interest stands paid within a period of 6 months from the date on which the Finance Bill 2012 received the assent of the President, no penalty shall be imposed on the assessee. It is the contention of the learned advocate that inasmuch as they have paid the service tax either before the said retrospective amendment or within a period of 6 months from the said amendment, no penalty can be imposed upon him in terms of the above sub-section (2) of Section 80. He also relied upon number of decisions in his support.

4. We find that in the case of *Faryland Hotels and Resorts (P) Ltd. v. CCE* [Final Order No. 50094/2014, dated 7-1-2014] as also in the case of *Discovery Holdings (P.) Ltd. v. CST & ST* [Final Order No. 50208/2014, dated 21-1-2014, and in the case of *Chandresh Shantilal Shah v. CCE & ST* [Order Nos. A/11809-11812/2013, dated 19-12-2013] the Tribunal has taken note of the said Section 80(2) of Finance Act, 1994 and has held that no penalty is to be imposed on the assesseees.

5. When the appellant placed reliance on the said decisions of the Tribunal, a very strange reasoning stands adopted by the Commissioner. For better appreciation, the same is reproduced below:

"14.10.7Section 80(2) of the Act is not the point of contention in the case at (c) above and hence, the same is not relevant to the fact of this case. In the cases at (a) and (b) above and the Hon'ble Tribunals held that the benefit of Section 80(2) of the Act is applicable even if the service tax along with interest in respect of Renting services were paid prior to 28.05.2012 also. However, the said decisions of the Hon'ble Tribunals are very latest and involving low revenue matters. The department still has time to prefer an appeal against the such decisions based on the revenue involved. Therefore, I find that it is premature for me to strictly follow the ratio of the said decisions and the case before me involving high revenue matter....."

On going through the above, we note that adjudicating authority, is not disputing the fact of issue relating to penalties being held in favour of the assessee by the above decisions of the Tribunal. However he has not followed the same on the ground that amount involved in those cases was on the lower side and they are recent decisions. We find no merits or any justification for the above reasoning of the Commissioner. Law declared by the Tribunal is equally applicable to all the assesseees irrespective of the amount involved. The same would not go on changing depending upon the amount involved in a particular case. As such, reasoning adopted by the Commissioner only reflects upon lack of knowledge of law on his part. Further, the Tribunal's decisions are binding on the lower authorities and cannot be ignored on the sole ground that the Revenue may prefer to file appeal against the same before the higher authorities. It is not the Revenue's case that such decisions stand challenged by them and stand set aside by the Higher Forum. Learned A.R. has not been able to place anything on record to

that effect.

6. Apart from above, we find that provisions of Section 80(2) which were introduced with effect from 28.05.2002 are to the following effect.

"Section 80. Penalty not to be imposed in certain cases.-....

(2) Notwithstanding anything contained in the provisions of Section 76 or Section 77 or Section 78, no penalty shall be imposable for failure to pay service tax payable, as on the 6th day of March 2012, on the taxable service referred to in sub-clause (zzzz) of clause (105) of Section 65, subject to the condition that the amount of service tax along with interest is paid in full within a period of six months from the date on which the Finance Bill, 2012 receives the assent of the President."

The said amended Section was considered by the Tribunal in the case of *Chandresh Shantilal Shah* referred (*supra*) and has been held to be effective even prior to 28.05.2012. The Hon'ble Karnataka High Court in the case of *CCE & ST v. Adecco Flexione Workforce Solutions Ltd.* [CEA No. 101 of 2008, dated 8-9-2011] has taken a very serious note of the fact that when assessee deposits tax amount along with interest there is no need for issuance of notice to him for the purpose of imposing penalty. In these circumstances it is the officer issuing the notice who is required to be punished and not the assessee. The Hon'ble High Court observed that

"If notice is issued, the person to be punished is the officer issuing the notice, not the assessee: It is high time, the authorities will change their attitude towards these tax payers, understanding the object with which this enactment is passed and also keep in mind the express provision as contained in sub-Sec. (3) of Sec. 73. The Parliament has expressly stated that against persons who have paid tax with interest, no notice shall be served."

In view of the foregoing discussion, we find no justifiable reasons to impose penalty upon the assessee. The same is accordingly set aside.

7. We also note that the lower authorities have confirmed the demand of Rs 3.75 lakhs by denying CENVAT credit to the assessee for which, according to the learned advocate, there was no proposal in the show-cause notice. As such we find the confirmation of the said demand is beyond the scope of the notice. The same is accordingly set aside. Appeal is disposed of in above manner.