



अध्याय (अपील) का नवीनीकरण एवं एक साथ कई अपील प्रस्तुत करने का प्रणाली

Section 143(1)(b) and 143(1)(c) of the Income Tax Act, 1961

विषय: एक ही फाइल में एक साथ कई अपील प्रस्तुत करने का प्रणाली

Section 143(1)(b) and 143(1)(c) of the Income Tax Act, 1961

दस्तावेज संख्या: 143/2018

Telephone No. (055) - 2677520/2677511 Fax: www.nat.tribunal.gov.in



संबंधित प्रकरणों की सूची

क्र.	अपील संख्या	अपीलकर्ता का नाम	दिनांक
1	143/2018-2017	श्री. राजेश कुमार	11.07.2018

A. अपील संख्या: 143/2018-2017

BHV-EXCUS-006-APP-169-2018-19

अपील का दिनांक:	11.07.2018	अपीलकर्ता के पता का दिनांक:	12.07.2018
Date of Order:		Date of Receipt:	

नुसार संतोष, मातृक (143/2018) संख्या: 143/2018-19
Shri. R. K. Bhé Kumar Sanyal, Commissioner (Income Tax), Rajahmundry

- B. अपीलकर्ता का पता: श्री. राजेश कुमार, मातृक (143/2018) संख्या: 143/2018-19, पता: 143/2018-19, पता: 143/2018-19
- C. अपीलकर्ता के पता का पता: श्री. राजेश कुमार, मातृक (143/2018) संख्या: 143/2018-19, पता: 143/2018-19, पता: 143/2018-19

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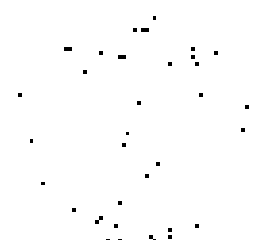


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ORDER-IN-APPEAL

M/s. Mahlani Overseas Private Limited, Plot No. 25, Rayon Foot Office, Rayon Factory, Metwadi (hereinafter referred to as 'appellant') has filed present appeal against Order-in-Original No. ACUND/00/2017 dated 01.03.2017 (hereinafter referred to as 'impugned order') passed by the Assistant Commissioner, Central Excise, Junagadh (hereinafter referred to as 'the lower adjudicating authority').

2. The brief facts of the case are that audit revealed that appellant has received Legal Consultancy Service from July, 2012 and hence was liable for payment of service tax from the month of July, 2012 under reverse charge mechanism but appellant amended their Service Tax Registration on 11.08.2014 only and violated provisions of Section 89 of the Act read with Rule 4(1) of Service Tax Rules, 1991. Therefore, appellant rendered themselves liable for penal action under Section 77(1)(a) of the Finance Act, 1994 (hereinafter referred to as the Act). Audit also revealed that appellant had no 'Free on Road' agreement with vendors from whom goods purchased by them and since appellant had paid freight on purchase of goods, they were liable for payment of service tax in the category of GTA but appellant had not paid service tax. SCN No. WAD/20051AXD/07015/16 dated 3.3.16 was issued to the appellant demanding service tax in the category of GTA from October 2012 to September, 2015 under Section 73(1) of the Act along with interest under Section 75 of the Act and for imposition of penalty under Section 77(1)(a), Section 77(2), Section 77(1)(C) and Section 78 of the Act. The lower adjudicating authority vide impugned order imposed penalty of Rs 200/- for non-amendment of service tax registration for legal consultancy service under Section 77(1)(a) of the Act but dropped proceedings for demand of service tax in the category of GTA and released from imposing penalty under Section 77(2), Section 77(1)(C) and section 78(1), of the Act.

3. Being aggrieved with the impugned order, appellant filed appeal, inter alia, submitting that imposition of penalty @ Rs 200/- per day from 02.08.2012 under Section 77(1)(a) of the Act is erroneous, as appellant had made advance payment towards legal consultancy service of Rs 7,20,000 and for the first time



service was availed in Apr. 2014 and paid out liability of service tax. Therefore, appellant has made no default on 7/2012 and no penalty can be imposed. The lower adjudicating authority has not gone through the material facts and records of appellant and did not take care to verify whether the imposition of such aggressive is from the date of default or not. Appellant had liability of Rs. 7,000/- as recipient of Legal Consultancy Service that is also subject to Central credit though not availed, where the department has an actual loss of revenue. Appellant was unknown about recent amendment in applicability of Reverse Charge Mechanism on Legal Consultancy Service. Appellant was registered with Service Tax Department since last 10 years and there could not be any mala fide intention or men's rea for non payment of service tax. Appellant relied on decisions of the Hon'ble CESTAT New Del. in the case of Sandhar Dhandi (P) Ltd - 2008 (2) STR 7 (10) (Del.) and R.K. Electronic Cable Network - 2008 (2) STR 160 (Tri. - Del.) in support of their contentions.

4. Personal hearing in this matter was attended to by Shri Ka. S. Tanna Advocate who reiterated the grounds of appeal and submitted that they had availed legal service only in 2013 and hence penalty cannot be imposed with effect from 1/7/2012; that he requested to set aside penalty imposed on the appellant under Section 77(1)(a) of the Act in view of Orders of the Hon'ble CESTAT quoted in Appeal Memorandum; that they may be allowed to submit written submissions within a week. No one appeared from the Department though 3 F. notices had been issued to the Commissionerate/Division.

4.1 In written submissions, the appellant, inter alia submitted that they had made advance payment of Legal Consultancy Service on 17/4/2013 to Advocate to defend case on their behalf before the Hon'ble High Court of Gujarat. Appellant had received invoice on 21/03/2014 and the case was disposed on 19/5/2014; that the lower adjudicating authority was wrong in imposing penalty from the date of institution of new service without due consideration and contrary to the facts on record, that appellant is registered since 2008 and got registration certificate amended on 9/11/2014 prior to the issuance of SGN, therefore, there is no mala fide intention for suppression of

facts and it is a procedural lapse due to general impression that amendment is required only when there is change in the business profile of the assessee. It is settled law that while imposing penalty under Finance Act, a reasonable cause to be considered and a reasonable view should be taken. That appellant relied on decision of Hon'ble CESTAT in the cases of *Sanodia Shree Ltd* reported as 2015 (1) TMI 385-CESTAT Mumbai and *Basydec* reported as 2015 (2) STP 937 (Mad) in support of their submissions.

Findings:

5. I have carefully gone through the facts of the case, the impugned order Appeal Memorandum and written as well as oral submissions made by the appellant. The issue to be decided in the appeal is whether in the facts and circumstances of the present case, the impugned order imposing penalty of Rs. 68,200/- under section 77(1)(a) of the Act for failure to obtain Service Tax Registration for Legal Consultancy Service is correct or not.

6. I find that demand of Service Tax in the category of Legal Consultancy Service is not under dispute since the appellant has paid service tax at the appropriate rate (or being pointed out by Audit). The lower adjudicating authority has imposed penalty @ Rs. 7500/- per day for the period from 2.5.2013 to 9.5.2013 and also imposed penalty of Rs. 10,000/- for subsequent period from 10.5.2013 onwards under Section 77(1)(a) of the Act for failure to obtain Service Tax Registration for Legal Consultancy Service. I would like to reproduce Section 77(1)(a) prevailing at the time when payment towards Legal Consultancy Service has been made by the appellant which reads as under -

"Section 77(1) Any person -

(a) who is liable to pay service tax, or attempts to take registration, fails to take registration in accordance with the provisions of Section 69 or rules made under this Chapter shall be liable to pay a penalty which may extend to ten thousand rupees or two hundred rupees for every day during such failure continues, whichever is higher, starting with the day after the due date, till the date of actual compliance."

c.

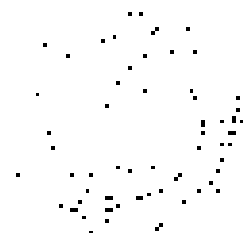
6.1 I find that the above provisions have been substituted by the Finance Act, 2013, w.e.f. 10.5.2013, which reads as under:

‘person is liable to pay service tax, or required to take registration, fails to take registration in accordance with the provisions of Section 69 or rules made under this Chapter shall be liable to pay a penalty which may extend to ten thousand rupees.’

6.2 From the above provisions of Section 77(1) of the Act, it can be seen that prior to 10.5.2013, penalty which may extend to ten thousand rupees or one hundred rupees for every day during such failure continues, whichever is higher is imposed on a person, who is liable to pay service tax or failure to obtain service tax registration and a Rs. 10,5000 penalty upto ten thousand rupees is in vogue.


6.3 The appellant also contended that they made advance payment towards Legal Consultancy service on 17.4.2013 and received Legal Consultancy Service only in April, 2014 and was liable to pay service tax of Rs. 1,000/- only against which penalty of Rs. 99,500/- has been imposed by the lower adjudicating authority which is very high. It is submitted copy of Ledger Account and copy of Legal Bill raised by their Advocates and copy of ledger account of subsidiary merchandise filed and the appellant was liable to pay service tax on 17.1.2013 in terms of Notification No. 20/2012 ST dated 20.6.2012 read with Rule 60 of Central Taxation Rules, 2011 when advance payment is made by them. Therefore, imposition of penalty @ Rs. 200/- from 2.5.2012 without verification of factual records is not legal, proper and correct.

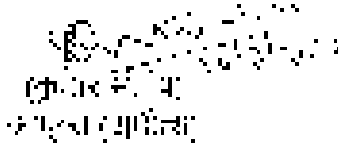
6.4 I also find that penalty under Section 77(1)(a) of the Act is inoperative in such cases where person is liable to pay service tax and he fails to take registration. The facts of the present case revealed that the appellant was registered with Service Tax hence, it cannot be said that appellant has not obtained service tax registration. It is also to be noted that appellant has discharged their service tax liability in the capacity of Legal Consultancy Service received by them before issuance of bills as per when pointed out by Audit. I further find that appellant was having Service Tax registration but they failed to amend registration by not securing Legal Consultancy Service in the



List of Services provided/received for which they are liable to pay service tax. Further Section 73(3) of the Act provides that, if the person pays service tax on the basis of his own ascertainment or on the basis of tax ascertained by the Central Excise officer before service of SCN, no SCN was required to be issued. Further, whatever service tax payable by the appellant under reverse charge mechanism as per Notification No. 30/2012-SEI dated 20.6.2012 would be available as credit credit to them and hence, there could not be any intention of appellant to avoid payment of service tax. In view of above, I find that imposition of penalty of Rs. 55,200/- under Section 77(1)(g) of the Act for failure to amend Service Tax Registration as against service tax liability of Rs. 7,000/- is very harsh and highly disproportionate. Looking to the facts that the appellant has discharged their service tax liability of Rs. 7,000/- immediately on being pointed out by Audit and have also amended service tax registration prior to the issuance of the impugned SCN, I reduce penalty of Rs. 55,200/- imposed under Section 77(1)(g) of the Act by the impugned order to Rs. 7,000/-.

7. In view of above, I modify the impugned order imposing penalty and partially allow appeal filed by the appellant, as above:

आदेश।

 प्रमुख, सी.एस.टी. विभाग,
 अहमदाबाद (100)


 (प्रमुख, सी.एस.टी. विभाग)
 अहमदाबाद (100)

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Copy for information and necessary action to:

- 1) The Chief Commissioner, CGST & Central Excise, Ahmedabad Zone, Ahmedabad for favour of kind information.
 - 2) The Commissioner, CGST & Central Excise, Gandhinagar, Gandhinagar
 - 3) The Assistant Commissioner, CGST Division, Jamnagarth
- ✓ Guard file.

