(2011) 01 KAR CK 0234

In the Karnataka High Court

Case No : C.E.A. No. 60 of 2010 and Miscellaneous Civil Application No. 21516 of 2010

Commissioner of Service Tax, Bangalore — APPELLANT

Vs

VEE AAR Secure — RESPONDENT

Date of Decision : 27-01-2011

Acts Referred:
Finance Act, 1994 — Section 69, 73 (3), 75 A, 76, 77

Citation : (2011) 22 STR 517

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : T.M. Venkata Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal is by the Revenue challenging the order passed by the Tribunal 2009 (14) S.T.R. 50], which has set aside the order passed by the Revisional Authority imposing the penalty, which was declined to be imposed by the Original Authority.

2. The assessee is a security agency, a company operating in India at more than one place. Their Head Office is at Delhi. After Service Tax came into force, they obtained Service Tax Registration with jurisdictional Central Excise Office in terms of Section 69 of the Finance Act, 1994. When a demand was issued to the assessee at Bangalore in a sum of Rs. 3,97,004/- for the period from 2002-03 to 2003-04, they sent a reply stating that the head office has paid the service tax. Thereafter, they realized that the head office has not paid the service tax and on instructions, they registered themselves at Bangalore and paid the entire service tax and interest due thereon for the delayed payment. It is thereafter a notice was issued demanding payment of penalty. Taking into consideration the aforesaid undisputed facts, the Original Authority though confirmed the demand of Rs. 3,97,004/- for service tax and Rs. 87,836/- towards interest, it dropped the penalty proceedings u/s 75A, 76, 77 & 78 of the Finance Act, 1994 extending

the benefit of Section 80. The Revisional Authority initiated review proceedings against the said order and found that the reason given by the assessee is not a reasonable one and therefore the order of the Original Authority dropping the proceedings was set aside and imposed the penalty. Aggrieved by the same, the assessee preferred an appeal to the Tribunal. The Tribunal on reappreciation of the entire material on record, held that the Original Authority has given a reasons for waiver of penalty in exercise or his powers u/s 80 of the Finance Act and there was actually no mala fide intention to evade the payment of service tax. Once the lapse was pointed out, the assessee has discharged service tax liability along with the interest. More over, even Section 73(3) provides wavier of show cause notice when the assessee pays the service tax immediately alter, it is pointed out. When once the Original Authority exercised his powers u/s 80 of the Finance Act, after recording proper reason, it cannot be reopened to impose penalty by the Commissioner in its revisional jurisdiction and therefore, they were of the view that the order passed by the Revisional Authority is illegal, contrary to law and therefore, it set aside the order. Aggrieved by the same, the revenue is before this Court.

3. From the aforesaid facts, it is not in dispute that the branch office at Bangalore was under the impression that the head office is paying the service tax on their behalf. When it was pointed out that no such payment is made, they got separate registration at Bangalore and paid the entire service tax with interest. This shows that there was no intention on their part to avoid paying service tax and the interest. In those circumstances, when the Original Authority was satisfied about their bona fides and in exercise of his powers u/s 80 of the Finance Act, 1994, the Original Authority was justified in dropping the proceedings for penalty. We agree with the reasoning of the Original Authority and it is purely a question of fact. The fact finding authority on appreciation of the entire material on record coupled with the fact that even before the issue of show cause notice, the assessee has paid the service tax with interest, a case for wavier is made out. No substantial question of law is involved in this appeal for consideration. Accordingly, the appeal is dismissed.

4. In view of the main appeal itself is dismissed on merits as meritless, no useful purpose will be served in ordering the notice on application for condonation of delay. Accordingly, Misc. Civil 21516/10 is also dismissed.

