
(2011) 07 KAR CK 0063
In the Karnataka High Court
Case No : C.E.A. No. 20 of 2009

Commr. of Service Tax, Bangalore

APPELLANT

Vs

Fruition Informatics (P) Ltd.

RESPONDENT

Date of Decision : 14-07-2011

Acts Referred:

Finance Act, 1994 — Section 73, 75, 76, 78

Citation : (2012) 282 ELT 30 : (2012) 26 STR 519 : (2013) 57 VST 202

Hon'ble Judges : V.G. Sabhahit, J;Ravi Malimath, J

Bench : Division Bench

Advocate : N.R. Bhaskar, for the Appellant; Rukmini Menon, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal is filed by the Revenue being aggrieved by the order passed by the Customs, Excise and Service Tax Appellate Tribunal South Zonal Bench, Bangalore, dated 11-6-2008 2008 (12) S.T.R. 273 wherein the appeal filed by the Revenue challenging the order passed by the Commissioner of Service Tax and the First appellate authority dated 23-3-2007 before the Commissioner of Central Excise (Appeals) by the respondent herein has been allowed by setting aside the penalty imposed by the Assistant Commissioner of Service Tax in the Order-in-Original No. 86/2006, dated 21-6-2006. The material facts necessary for the disposal of this appeal are as follows:

The Anti Evasion Wing of the Service Tax Commissioner having gathered Intelligence to the effect that M/s. Fruition Informatics (P) Ltd., No. 315, 100 Ft. Road, Indira Nagar, Bangalore-560038 were providing taxable service in the category of Commercial Training and Coaching and have not taken Registration nor paid the Service Tax and filed the periodical returns, the Anti Evasion Wing called for the records for verification, it was revealed that the respondent herein had been collecting Service Tax from 8/2004 except for the period 9/2004 to 2/2005) but had not been paying the same to the Government. Accordingly a show cause notice was issued as to why service tax amounting to Rs. 1,39,952/-

for the period from 1-7-2004 to 31-3-2005 should not be demanded from them with interest and penalty as mentioned in the show cause notice. The notice was replied by the respondent contending that they were instructed by M/s. NIIT Ltd., franchise to charge service tax as the same had been clarified by the Commissioner of Central Excise, Delhi. Accordingly they had charged the software enabling them to charge Service Tax with effect from March, 2005. Later-on, on instructions from the Department they had remitted the Service Tax with interest from the period from 10-9-2004 to 28-2-2005 and subsequently for the period 1-7-2004 to 9-9-2004 though they had not collected the service tax. They had also filed the S.T.3 returns and that the delay was due to pending clarifications and there was no intention to evade payment of Service Tax. The Assistant Commissioner rejected the cause shown and imposed service tax confirming the demand of service tax and passed the following order :

"1. I confirm the demand of Service Tax of Rs. 1,39,952/- (Rupees One lakh thirty nine thousand nine hundred and fifty two only) u/s 73 of the Finance Act, 1994.

2. I appropriate the amount Rs. 1,39,952/- (Rupees One lakh thirty nine thousand nine hundred and fifty two only), paid by them towards the demand at Sl. No. 1.

3. I confirm the demand of interest under Sec. 75 of the Finance Act, 1994.

4. I appropriate the amount of Rs. 12,760/- (Rupees Twelve thousand seven hundred and sixty only) already paid by them as interest towards the demand at Sl. No. 3 above.

5. I impose a penalty of Rs. 100/- per day of everyday during which the failure to pay Service Tax continued under the provisions of Section 76 of the Finance Act, 1994.

6. I impose a penalty of Rs. 1,39,952/- (Rupees One lakh thirty nine thousand nine hundred and fifty two only) under the provisions of Section 78 of the Finance Act, 1994."

Being aggrieved by the said order an appeal was filed before the Commissioner of Service Tax in Appeal No. 197/2006-S.T. and the appellate authority by order dated 23-2-2007 held that admittedly tax and interest had been paid and the explanation offered for belated payment of tax and interest had been explained and reasonable cause had been made out for exempting the imposing of penalty u/s 80 of the Finance Act. The appellate authority has assigned cogent reasons as to why the explanation offered by the assessee for waiver of penalty needs to be accepted as they have already deposited the tax and the interest as contained in paragraph 8 to 10 of the appellate order and accordingly allowed the appeal by waiving the penalty imposed u/s 76 of the Act. Being aggrieved by the said order of the appellate authority of Revenue preferred an appeal before the CESTAT in Appeal No. S.T./286/2007 and the Tribunal dismissed the appeal by order dated

11-6-2008 holding that the waiver of penalty was justified. Being aggrieved by the said order this appeal is filed by the Revenue. The substantial questions of law that arises for determination in this appeal are as follows:

"(i) Whether the finding of the appellate authority waiving the imposition of penalty u/s 76 of the Act in exercise of the powers u/s 80 of the Act is justified?

(ii) Whether the finding of the appellate authority is contrary to the provisions of Sections 76 and 78 of the Act?"

We have heard the learned counsel appearing for the appellate and the counsel appearing for the respondent.

2. The learned counsel appearing for the appellant vehemently argued that admittedly there was delay in payment of tax. Interest had been deposited but no penalty was deposited as per the mandatory requirement u/s 76 of the Act and no explanation whatever was offered to make out reasonable cause for waiving the penalty in exercise of the powers u/s 80 of the Act. The learned counsel had taken us through the reasoning assigned by the assessing officer, the original authority in passing the order. The learned counsel further submitted that having regard to the explanation offered the same would not make out any cause for waiving the exemption of penalty.

3. On the other hand, the learned counsel appearing for the respondent submitted that the Tribunal and the first appellate authority have concurrently accepted the explanation and waived the penalty. The said finding is based upon the reasoning and does not suffer from any arbitrariness or non-consideration of material and therefore the finding is justified and does not attract the provisions of Sections 76 and 78 and as the penalty u/s 76 can be waived in exercise of the powers u/s 80 of the Act the explanation offered for non-waiving the penalty is accepted.

4. We have given careful consideration to the contentions of the learned counsel appearing for the parties and scrutinized the material on record. The material on record would clearly show that there was delay in payment of service tax and it is not disputed that the service tax and the interest have been deposited belatedly but the penalty amount was not deposited. The explanation offered by the respondent is that there was no intention to avoid payment of service tax and infact for the period from September, 2004 February 2005 the service tax has been deduct and further in view of the information given by the NUT of which the respondent is a franchise claiming that they have made out a ground claiming exemption the said explanation has been accepted by the appellate authority and confirmed by the appellate authority in exercise of the powers u/s 80 of the Act for waiver of penalty imposed u/s 76 of the Act. Having regard to the said reasoning assigned by the appellate authority and the Tribunal we hold that the concurrent finding of fact arrived at by the first appellate authority and the Tribunal that a ground is made out for waiving of the penalty 80 of the Act is justified and does not suffer from any perversity or arbitrariness so as to call for

interference. Accordingly, we answer the substantial questions of law against the Revenue and hold that the appeal is devoid of merits and pass the following order:

The appeal is dismissed.