(2014) 12 GUJ CK 0072

In the Gujarat High Court

Case No : Tax Appeal No. 1245 of 2014 and Civil Application (OJ) No. 643 of 2014

Indsur Global Ltd. APPELLANT

Vs

Addl. Commr. of Service Tax RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:
Finance Act, 1994 — Section 76, 77, 78, 79, 80

Citation : (2015) 51 GST 557 : (2015) 38 STR 14

Hon'ble Judges : V.M. Pancholi, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Hasit Dilip Dave, Advocates for the Appellant

Judgement

Akil Abdul Hamid Kureshi, J.—The appellant has challenged the judgment of the Customs, Excise & Service Tax Appellate Tribunal ("the Tribunal" for short) dated 27-6-2014 raising the following questions for our consideration:

"1. Whether the Tribunal was justified in not dropping the penalties when duty and interest was voluntarily paid before the issuance of notice and adjudication in this case?

2. Whether the Tribunal and adjudicating authorities were right in imposing any penalties in this case?

3. Whether this was a fit case for granting waiver of penalties u/s. 80 of the Act?

4. Whether the Tribunal could have ignored their own settled orders and decision of the Higher Courts in not dropping penalties?"

The issue pertains to levy of penalties under Sections 77 and 78 of the Finance Act, 1994 for having collected Service Tax on taxable service but not having deposited the same with the Government. The adjudicating authority imposed such penalties and did not accept the assessee''s defence of bona fide belief and error. These attempts on part of the assessee to bring the case within the ambit of Section 80 of the Finance Act, 1994 was repelled. The appellate authority also confirmed the decision of adjudicating officer. In further appeal before the Tribunal it was argued that the appellant had already paid tax before issuance of notice. The penalties therefore, ought to have been waived. The Tribunal noted that there was no dispute about the duty liability with respect to the business auxiliary service provided by the assessee. It was further held that the Service Tax was actually recovered from the service recipient in the invoices, however, while filing the returns for the relevant period, assessee had shown Service Tax payment on these services as nil. The Tribunal therefore, held that the assessee could not show reasonable cause to bring out as to what prevented the assessee from making the payment of Service Tax when the same was actually recovered from the service recipient.

2. Facts are eloquent. Admittedly, the assessee recovered service tax from the service recipient but did not deposit with the Government till first it was so pointed out through communication by the adjudicating authority and thereafter, summonses were issued by the investigation wing. Only thereafter, the assessee agreed to pay the same. In that view of the matter, features of Sections 76, 77 and 78 of the Act were applicable. The only question was whether the assessee could get the benefit of Section 80 of the Finance Act, 1994 which reads as under:

"80. Penalty not to be imposed in certain cases.- Notwithstanding anything contained in the provisions of Section 76, Section 77, Section 78 or Section 79, no penalty shall be imposable on the assessee for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure."

3. It can thus be seen that even if the provisions of Sections 76, 77 and 78 of the Act are otherwise applicable, no penalty would be imposed on an assessee for the failure referred to in such provision, if he proves that there was reasonable cause for such failure. Thus the primary duty is on the assessee to establish reasonable cause for failure. What would constitute reasonable failure in a given case would essentially be a question of fact. The Revenue authorities as well as the Tribunal concurrently came to the conclusion that the assessee failed to offer any such reasonable cause. In particular, as noted earlier, the Tribunal recorded that the assessee had in fact recovered Service Tax periodically from the service recipient. Not only that such service tax was not deposited with the Government in the returns filed it was declared that Service Tax liability was nil. Now to argue that this was done under a bona fide belief and that the assessee having paid the Service Tax before the issuance of show cause notice which amounts to reasonable cause, cannot be accepted. No question of law arises. Tax Appeal is dismissed. Civil Application also stands dismissed.

