(2023) 10 CESTAT CK 0013

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No.41516 Of 2014

M/S.LMT (India) Pvt. LtdCCC Commissioner Of GST & Central Excise

Date of Decision : 09-10-2023

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 15
Finance Act, 1994 — Section 73(3), 77, 78, 80

Citation : (2023) 10 CESTAT CK 0013

Hon'ble Judges : Sulekha Beevi C.S., Member (J);Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : N. Sathyanarayanan, Radhika Chandrasekar

Final Decision : Disposed Of

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that the appellant was issued show cause notice alleging non-payment of service tax for the period May 2008 to March 2011 and proposing to demand the same along with interest and for imposing penalties. After due process of law, the original authority confirmed the demand, interest and appropriated the amounts already paid by the appellant. Besides this, penalty under Section 78 of the Finance Act, 1994 was also imposed.

2. On behalf of the appellant, the Ld. Counsel Ms. Radhika Chandrasekar appeared and argued the matter. It is submitted by the learned counsel that the appellant had paid up the entire demand of service tax on different dates from 12.04.2011 onwards and the interest on the belated payment was also paid by the appellant. Thereafter, show cause notice dt. 16.04.2012 has been issued alleging suppression of facts and wrong availment of credit. In the show cause notice, it is proposed to appropriate the amount already paid by the appellant and also for imposing penalties. The reply issued by the appellant to the show cause notice was adverted to by the learned counsel to argue that the appellant had put forward the plea that no show cause notice can be issued to an assessee under sub-section (3) of Section 73 of the Finance Act, 1994 when the amount

as calculated by the Central Excise officers or on own volition by the assessee is paid up by the assessee. In the present case, the appellant is contesting only the penalty imposed under Section 78 and Section 77 of the Finance Act, 1994 as well as Rule 15 of Cenvat Credit Rules, 2004. It is submitted that the appellant having paid the service tax along with interest show cause notice ought not to have been issued. Further, the demand came to be raised for the reason that the there was transition / amendment which was brought forth with effect from 10.05.2008 in regard to the service tax that is to be paid by Associated Enterprises on book adjustment. The period is May 2008 and therefore the delay in payment occurred only on the understanding and accounting with regard to the new amendment. The decision of the Tribunal in the case of M/s.Servocraft HR Solutions Pvt. Ltd. Vs CCE I& ST, Chennai - Final Order No.40121/2023 dt. 07.03.2023 was relied by the counsel to argue that when the service tax has been paid up along with interest, show cause notice ought not to have been issued and the penalties imposed require to be set aside. Ld. Counsel prayed that the appeal may be allowed.

3. Ld. A.R Sri N. Sathyanarayanan supported the findings in the impugned order. It is submitted that the original authority has considered invocation of Section 80 of the Finance Act, 1994 and observed that appellant has not put forward reasonable cause for setting aside the penalty.

4. Heard both sides and perused the records.

5. From the facts narrated above, it is very clear that the appellant has paid up the service tax along with interest much before issuance of show cause notice. There was also an issue of irregularly availed cenvat credit. The appellant has paid up this amount also along with interest. The show cause notice itself shows that the amount paid up by the appellant is to be appropriated. In such circumstances, as per sub-section (3) of Section 73 of the Finance Act, 1994, the department ought not to have issued any show cause notice. Further, it can also be seen that the delay in payment of service tax was due to transition / amendment that was brought forth w.e.f. 10.05.2008 with regard to the liability to pay service tax on book adjustment by Associated Enterprises. Taking note of this fact into consideration and especially as the appellant has paid up the entire amount of service tax / wrongly availed cenvat credit along with interest much before issuance of show cause notice, we are of the opinion that as per sub-section (3) of Section 73 of the Finance Act, 1994, no show cause notice ought to have been issued to the appellant. The penalty imposed on the appellant under Section 77, 78 of the Finance Act, 1944 and under Rule 15 of CCR 2004 therefore requires to be set aside. Ordered accordingly.

6. The impugned order is modified to the extent of setting the penalties imposed as above without disturbing the confirmation of service tax, interest and the appropriation thereof. The appeal is disposed of in above terms.