

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
KOLKATA**

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.28 of 2010

(Arising out of Order-in-Appeal No.28/Commr/ST/Kol/2009-10 dated 29.10.2009
passed by Commissioner of Service, Kolkata)

M/s Jagati Cokes Private Limited

White Tower, 115, College Street, Room No.G II, Kolkata-700012

Appellant

VERSUS

Commissioner of Service Tax, Kolkata

180,Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

APPEARANCE :

Shri N.K.Chowdhury, Advocate for the Appellant
Shri K.Chowdhury, Authorized Representative for the Revenue

WITH

Service Tax Appeal No.25 of 2010

(Arising out of Order-in-Appeal No.06/Commr/ST/Kol/2010-11 dated 02.08.2010
passed by Commissioner of Service, Kolkata)

Commissioner of Service Tax, Kolkata

180,Shantipally, Rajdanga Main Road, Kolkata-700107

Appellant

VERSUS

M/s Jagati Cokes Private Limited

White Tower, 115, College Street, Room No.G II, Kolkata-700012

Respondent

APPEARANCE :

Shri K.Chowdhury, Authorized Representative for the Revenue
Shri N.K.Chowdhury, Advocate for the Respondent

CORAM:

HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO...75024-75125/2023

DATE OF HEARING : 28 .02.2023

DATE OF DECISION : 28 .02.2023

Per Ashok Jindal :

Both sides are in appeal against the impugned order.

2. Brief facts of the case are that the appellant is a manufacturer of low ash metallurgical coke and coke breeze. For the activities, the assessee has taken services from Goods Transport Services and did not pay service tax initially. The period involved is April, 2005 to September, 2006. The levy of service tax came into effect of Goods Transport Services from 01.01.2005 under reverse charge mechanism. As it was new entry, the appellant did not pay service tax, but the transporters have paid service tax and by way of issuance of show-cause notice, the amount paid by the service providers has sought to be appropriated against the demand of service tax payable by the assessee under reverse charge mechanism. After adjudication, the amount paid by transport agency on account of Goods Transport Services, was appropriated, but penalties under Sections 77 and 78 of the Finance Act, 1994, were confirmed. Penalty under Section 76 was dropped. Hence, the assessee is before us.

3. The assessee's appeal is contested for imposition of penalty under Sections 77 and 78 of the Finance Act, 1994, whereas the Revenue's appeal is contested for dropping the penalty under Section 76 of the Finance Act, 1994.

4. Heard both sides.

5. Considering the facts that there is no dispute that the service tax has been paid by the service provider, although the same was paid by the assessee under reverse charge mechanism and the same has been paid and appropriated. Now, the question arises, whether in such circumstances, the assessee is required to penalize or not. Similar case has been decided by this Tribunal in the case of M/s Kamrup Coke Industries & SKJ Coke Industries Vs. Commissioner of Service Tax, Kolkata vide Final Order No.77300-77305/2018 dated 29.11.2018. This Tribunal has held as under :

"7. We have heard both sides and perused the appeal records in detail. It is not the case of the Revenue that liability to pay service tax amount under reverse charge mechanism has been disputed by the assessee, but the case of imposition of penalties under Section 76, 77 and 78 of the Act. Though the Ld. Commissioner has confirmed penalty u/s 78 for which assessee is

in appeal, the Department has filed appeals for further imposition of penalty u/s 76 on the assessee (service recipients) and further penalty under Section 77 of the Act on the concerned transport agencies rendering GTA services. The Ld. DR does not dispute the fact which is on record, that service tax amount has been duly deposited, either by the transport agencies or by the assessee for the remaining portion, well before the issue of Show Cause S.T.Appeal Nos.276-278/09 & 283,284 &287/09 6 Notice though belatedly for which interest has also been paid. It is also not the case of the Revenue that they are seeking double payment of tax which stood deposited by the transport agencies as reimbursed and borne by the assessee manufacturers receiving transport service which fact has also been appreciated by the Ld. Commissioner in the impugned Original Order. We agree with the submissions made by the assessee that when service tax amount has been deposited before the Show Cause Notice, no penalty should be imposed in view of the law as laid down by the Hon'ble Karnataka High Court in case of Pushpadeep Enterprises (Supra) relied upon by the assessee, which is squarely applicable to the facts of the present case. We also find force in the argument of the assessee that in terms of the provisions of Section 80 of the Act, they are entitled to full waiver of penalty under Section 78 as well as Section 76 and 77 of the Act, inasmuch there was a reasonable case for non payment of tax as the very levy of service tax on GTA service under reverse charge was a new concept. In view of the above, we do not find any reason to burden the assessee with penalty under Section 78 of the Act and the same is therefore set aside. On the same count, since penalty under Section 76 and 77 are not imposable, the appeals filed by the Revenue are rejected being devoid of any merits. Cross objections filed by the assessee also stand disposed of."

6. We do agree with the decision of the Tribunal in the above cited cases and hold that the assessee is entitled for benefit of Section 80 of the Finance Act, 1994 as the amount of service tax has already been

paid. Therefore, the appellant is entitled for immunity from imposing penalty. Therefore, we set aside the order imposing penalty under Sections 77 & 78 of the Finance Act, 1994 on the assessee and the order dropping the penalty under Section 76 of the Finance Act, 1994, is upheld.

7. In the result, the appeal filed by the assessee is allowed and the appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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