

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE  
TRIBUNAL  
BANGALORE**

REGIONAL BENCH - COURT NO. 1

**Service Tax Appeal No. 20451 of 2021**

[Arising out of Order-in-Appeal No. COC-EXCUS-  
000-APP-188-2021 dated 25/02/2021 passed by  
Commissioner of Central Tax, COCHIN( Appeal) ]

**Ace Test Labs And  
Consultancy**

Mrs.Divya Powani,  
Orchid Apartments 3rd Floor  
Anavathil, Mattancherry  
KOCHI  
KERALA  
682002

Appellant(s)

*VERSUS*

**Commissioner Of Central  
Tax & Central Excise, Cochin**

C.R. Buildings, I.S Press Road  
Cochin  
Kerala  
682018

Respondent(s)

**Appearance:**

Shri Anirudha R.J. Nayak, Advocate for the Appellant

Smt. D.S. Sangeetha, Addl. Commissioner(AR) for the  
Respondent.

**CORAM:**

**HON'BLE SHRI DR. D.M.MISRA, MEMBER (JUDICIAL)**

**Final Order No. 20333 /2023**

Date of Hearing: 03/03/2023

Date of Decision: 18/04/2023

**Per : DR. D.M.MISRA**

This appeal has been filed against the Order-in-Appeal  
No.COC-EXCUS-000-APP-188-2021 dt. 25/02/2021 passed by the  
Commissioner(Appeals), Cochin.

2. Briefly stated the facts of the case are that the appellant during the relevant time engaged in providing taxable services under the category of "Technical Testing and Analysis Services". On the basis of intelligence, investigation was initiated and show-cause notice was issued to the appellant on 22/04/2014 alleging evasion of service tax of Rs.12,76,526/- for the period 01/10/2008 to 31/03/2013 and recovery of the same and also proposing penalties under Sections 76, 77 and 78 of the Finance Act, 1994. On adjudication, the demand was confirmed with interest. The amount paid by the appellant during the course of adjudication along with interest was appropriated in the adjudication order and no penalty was imposed. The said order of the adjudicating authority was reviewed by the Department and appeal was filed before the Commissioner(Appeals) challenging non-imposition of penalty. The Commissioner(Appeals) modified the impugned order and imposed penalty of Rs.5000/- under Section 77 and penalty under Section 78 of the Finance Act, 1994. Hence the present appeal.

3. Learned advocate for the appellant submits that the proprietress of the appellant company was a house-wife; entire business transactions and day-to-day affairs of the firm was handled by (late) Shri Pratap D Powani, General Manager, her husband. The learned advocate submitted that the entire amount of demand of service tax along with interest was paid during adjudication proceedings. Further he has submitted that after the

demise of her husband, the proprietress of the appellant has been facing severe financial crisis and that she is raising funds for treatment of kidney failure of her daughter Ms. Juhi Powani. The learned advocate submitted that the amount required for kidney transplantation as certified by Amrita Institute of Medical Sciences and Research Centre, Cochin is around Rs.22,70,000/-. He has further submitted that in these circumstances, penalty imposed on the appellant, be waived invoking Section 80 of the Finance Act, 1994. In support, he referred to the following judgments:

- i. CCE, Bangalore-II Vs. Sunitha Shetty [2004(174) ELT 313 (Kar.)]
- ii. CST, Bangalore Vs. Motor World [2012(27) STR 225 (Kar.)]
- iii. CCE&C Vs. Port Officer [2010(19) STR 641 (Guj.)]

4. *Per contra*, the learned AR for the Revenue reiterated the findings of the Commissioner(Appeals). She submitted that the appellant had collected the service tax from the service receivers continuously for a period of 5 years from 01/10/2008 to 31/03/2013 but failed to discharge the service tax nor file returns with the Department disclosing receipt of the said service charges. She submitted that subsequent to confirmation of demand financial difficulty and other related problems cannot be a ground for dispensing with imposition of penalty imposed under Section 78 of the Finance Act, by resorting to Section 80 of the said Act. She has further submitted that Section 80 can be invoked only when a reasonable cause for failure to pay the service tax by the assessee is established; in the present case, the appellant before

the authorities below attributing the reason for non-payment of service tax even though collected from the service receivers stated that due to financial problem, the service tax could not be paid even though collected. It is her contention that the said ground for non-payment of service tax even though collected cannot be considered as reasonable cause under Section 80 of the Finance Act, 1994.

5. Heard both sides and perused the records. The only issue raised in the present appeal relates to imposition of penalty Sections 77 and 78 of the Finance Act, 1994 by the learned Commissioner(Appeals) in the impugned order. While imposing penalty of Rs.5000/- under Section 77 and penalty under Section 78, the learned Commissioner(Appeals) observed that since the appellant paid the demanded service tax along with interest hence they can avail the benefit of discharging 25% of the penalty as per Section 78(1) of the Finance Act, 1994. Learned advocate mainly argued that since the proprietress of the appellant firm was not involved day-to-day affairs of the company and her (late) husband was looking after the management of the company; therefore, imposition of penalty on the appellant-firm is not warranted. The learned advocate also drew my attention to the fact that the entire demand of service tax along with interest was paid by the proprietress after facing severe financial difficulty in arranging the funds post-demise of her husband. He has argued that there is a reasonable cause to invoke Section 80 of the Finance Act, 1994 in

the present case inasmuch as the daughter of the proprietress is facing a severe medical problem and huge funds are required for such treatment. He has vehemently argued that the circumstances narrated by him be considered as reasonable and invoking Section 80, the penalty be dropped.

5.1. I do not find merit in the contention of the learned advocate that Section 80 is invokable in the present case. The said provision reads as:-

*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.”*

5.3. A plain reading of the said section makes it clear that if the assessee proves that there was a reasonable cause for the failure in discharging service tax liability, then notwithstanding anything contained in Section 76, 77 and 78 penalty shall not be imposable. The facts in the present case are that the appellant collected service tax during the period 01/10/2008 to 31/03/2013 from the service receivers but failed to deposit the service tax amount so collected with the Government Treasury. Advancing reasons for non-payment of service tax even though collected, it has been submitted by the appellant that during the relevant period, they were under severe financial crisis. In my view, this

cannot be a reasonable cause for non-payment of service tax even though collected from the customers but not deposited with the Government. Also, the process of payment of collected service tax was commenced only after the Department initiated investigation and issued the demand notice to the appellant. The circumstances of financial difficulty in arranging the funds for payment of service tax collected and raising funds for the treatment of her daughter cannot be a ground to invoke Section 80 for setting aside the penalty imposed under Sections 77 and 78 of the Finance Act, 1994. The judgment cited by the learned advocate also lays down the principles that in the event, if there is reasonable cause for failure to make deposit, then only Section 80 would be attracted. In these circumstances, the impugned order is upheld and the appeal, being devoid of merit, is accordingly rejected.

(Order pronounced in the Open Court on 18/04/2023)

**DR. D.M.MISRA  
MEMBER (JUDICIAL)**

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