IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-07-2026

CORAM

THE HONOURABLE DR JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MRS.JUSTICE N. MALA

C.M.A.No.3329 of 2019 & C.M.A.No.3333 of 2019
and
C.M.P.No.19404 of 2019

C.M.A.Nos.3329 & 3333 of 2019

The Commissioner of GST & Central Excise,
O/o.The Commissioner of GST & Central Excise,
No.6/7, A.T.D Street, Race Course Road,
Coimbatore. … Appellant in both cases

Vs.

M/s.Artemis HR Services Cbe (P) Ltd.,
B-2, Sneha Niketan Apartments,
Damu Nagar, Puliakulam,
Ramanathapuram,
Coimbatore-641 045 … Respondent in both cases

Prayer in C.M.A.No.3329 of 2019: Civil Miscellaneous Appeal has been filed under Section 35G of Central Excise Act, read with Section 83 of the Finance Act, to against the Final order No.40055 of 2019 dated 14.01.2019 passed by the Honble Customs Excise and Services Tax Appellate Tribunal, Chennai received the appellant on 04.02.2019.

Prayer in C.M.A.No. 3333 of 2019: Civil Miscellaneous Appeal has been filed under Section 35G of Central Excise Act, read with Section 83 of the Finance Act, to set aside the Final Order NO.40055-40058/2019 dated 14.01.2019 passed by the Honble CESTAT, South Zonal Bench, Chennai.

For Appellant: in both cases — Mr.K.S.Ramaswamy, Central Govt. Standing Counsel.

For Respondent: in both cases — No appearance

COMMON JUDGMENT

(Order of the Court was made by G.Jayachandran J.)

These two Civil Miscellaneous Appeals been filed by the Department, pertaining to different periods. Being aggrieved by the orders passed by the Tribunal in allowing the appeals of the assessee, holding that the penalty imposed on the assessee under Sections 76 & 78 of the Finance Act, cannot sustain and requires to be set aside.

2. The Tribunal interfered with the orders of the Assessing Authority and the Appellate Authority only to the extent of imposing penalties under Section 77 of the Finance Act, leaving undisturbed the demand of service tax or interest.

3. The facts of the case is that the report of the Officers who inspected the respondent premises on various dates between 12.03.2009 to 30.04.2009 and found short-payment of service tax under the category “Business Support Service.” Though the explanation of the assessee that whatever short-payment on service tax alleged was not due to wilful intention but due to the financial incapacity arising out of huge outstanding dues from their clients, particularly

M/s.Rank Investments and Credits (India) Ltd. The explanation of the assessee been accepted by the Tribunal, which has led to reversing the findings of the Assessing Officer and the Appellate Authority.

4. At this juncture, it is pertinent to record that the common order of the Tribunal dated 14.01.2019 was challenged by the Department immediately and the appeals are pending for the past 7 years. The Department was unable to serve notice to the respondent. Meanwhile, it was reported before this Court that when the matter was taken up for hearing on 02.03.2020, the respondent has approached the Revenue Department for availing the benefit under the "Sabka Vishwas Scheme" (Amnesty Scheme) and sought time to get instructions from the Department whether to proceed with the appeal on merits or not.

5. On behalf of the respondent, Learned Counsel on record submitted that the respondent company had gone under liquidation. In response, the Learned Standing Counsel for the Department, Mr.K.S.Ramaswamy, took time to verify the position and report. Thereafter, certain documents were produced to this Court during the subsequent hearings but Court on verification of those documents found that the Form SVLDRS-3 are not for the relevant assessment year. Thereafter, on 06.07.2026, the Learned Standing Counsel appearing for the appellant/department has stated that the respondent has paid the penalty amount under "Samadhaan Scheme."

6. Today, when the matter taken up for consideration, the Learned Standing Counsel submitted that, on verification, it was found that though the respondent has submitted for the Amnesty Scheme, he has not paid the agreed penalties and his whereabouts were also not known. In the said circumstances, we are constrained to examine the order of the Tribunal, which is impugned in these appeals, with the aid of the material placed before us.

7. This Court, while admitting the Civil Miscellaneous Appeal No.3329 of 2019, the following substantial questions of law was framed.

> *"1. Whether in the facts and circumstances of the case, the Hon'ble CESTAT, South Zonal Bench, Chennai has committed substantial error in law through perversion of facts by holding that this is a fit case to invoke Section 80 for waiver of penalty of Rs.2,59,20,009/- without discussing any evidences on reasonable cause for the failure to discharge the service tax liability primarily on the ground of-financial distress especially when Respondent has reported profits for the financial years 2008-09 and 2009-10 and by relying on case laws that are not on identical facts?*

2. Whether the Tribunal is right in waiving penalty under Section 76 & 78 respectively of the Finance Act, 1944 by virtue of section 80 on irrelevant considerations and overlooking the relevant factual ones?"

Subsequently, in the Civil Miscellaneous Appeal No.3333 of 2019, the following substantial questions of law were framed.

1. Whether in the facts and circumstances of the case, the Hon'ble CESTAT, South Zonal Bench, Chennai has committed substantial error in law through perversion of facts by holding that this is a fit case to invoke Section 80 for waiver of penalty, by stating that the quantum of penalty depended on the date of payment of service tax, without discussing any evidences on reasonable cause for the failure to discharge the service tax liability primarily on the ground of financial distress especially when Respondent has reported profits for the financial years 2008-09 and 2009-10 and by relying on case laws that are not on identical facts?

2. Whether the Tribunal is right in waiving penalty u/s 76 & 78 respectively of the Finance Act; 1944 by virtue of section 80 on irrelevant considerations and overlooking the relevant factual ones?

3. Whether under the facts and circumstances of *the case the tribunal erred in interpreting the case laws which imparts waiver of penalty on financial crunch which is absent in the immediate case?*

8. The contention of the Department is that, though the statute under Section 80 of Finance Act provides for waiver of penalty, such wavier cannot be granted indiscriminately. There must be sound reasons and evidence to show the inability of the assessee to pay the penalty, coupled with the fact that the short-payment of tax was not wilful. According to the Learned Counsel, without discussing any evidence on the reasonable cause for the failure to discharge the service tax liability, merely on the submission of the assessee stating inability to pay the tax will not enure the benefit of waiver. In the course of arguments, the Learned Standing Counsel also produced Form-23ACA under the Companies Act, 1956, to show that the respondent-company has declared profits before the Registrar of Companies for the relevant period.

9. At the outset, we are distressed to note that the appellant/Department, while contesting the tax dispute in a casual manner, produce records in the course of hearing at the Second Appeal stage, a practice which has to be deprecated. That apart, the financial incapacity of the assessee/respondent, as recorded by the Tribunal and the subsequent events for the past 7 years, fortifies the reasoning given by the Tribunal about the financial incapacity of the assessee.

10. Therefore, we hold that the Tribunal was right in waiving the penalities under Sections 76 & 78 of Finance Act, 1994, by virtue of Section 80 of the Finance Act.

11. Accordingly, these Civil Miscellaneous Appeals stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

(Dr. G.JAYACHANDRAN, J.) & (N.MALA J.)
27-07-2026

Index :Yes/No.
Internet :Yes.
Neutral Citation :Yes/No.
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