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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: March 03, 2025

M/S RALSON CARBON BLACK LTD.

.....APPELLANT

V/S

**COMMISSIONER OF CUSTOMS & CENTRAL EXCISE,
CHANDIGARH**

.....RESPONDENT

**CORAM: HON'BLR MR. JUSTICE ARUN PALLI
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Saurabh Kapoor, Advocate,
for the appellant.

Mr. Saurabh Goel, Advocate,
for the respondent.

SUDEEPTI SHARMA, J.

1. The present appeal is preferred under Section 35G of the Central Excise Act, 1944 (hereinafter referred to as 'Act, 1944') read with Section 83 of the Finance Act, 1994 (hereinafter referred to as 'Act, 1994') for setting aside the Final Order No. ST/A/51425/2015-CU (DB) dated 27.03.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'CESTAT') in Service Tax Appeal No. 1028 of 2009, whereby, the learned Tribunal partly allowed the appeal of the appellant thereby confirming the demand of Service Tax, as well as penalty u/s 77 and 78 of the Act, 1994.

2. The brief facts of the case are that the appellant, who is engaged in the manufacture of "Carbon Black" falling under Chapter 28 of the Central Excise



Tariff Act, 1985, was registered with the Central Excise Department vide Registration No. 145/GTA/SNG/MKL/05 under the category of “Goods Transport Agency” as required under Section 69 of the Act, 1994 for the purposes of making payment u/s 68(2) of the Act *ibid*.

3. In the year 2003, the appellant was declared as a sick unit by the Board of Industrial and Financial Reconstruction (BIFR) and owing to its precarious financial position during the period between August, 2006 to March, 2007, the appellant was unable to pay the service tax amount although the appellant admitted its liability to the same in the ST-3 Return filed by it with the Department.

4. Since there was default in the payment during the relevant period, the respondent department issued a Show Cause Notice dated 27.11.2007 to the appellant, wherein, the department alleged that although the appellant was availing the services of goods Transport Agencies and also making the payment of freight for the same, yet it had deliberately not paid the service tax thereon.

5. The appellant was granted sufficient time to file reply to the show cause notice but it chose not to file the same. Appellant was granted personal hearing on 19.03.2008 and again the same was not attended or replied by the appellant. Therefore, the learned Additional Commissioner, Ludhiana passed Order-in-Original dated 07.04.2008, whereby, the recovery of service tax to the tune of Rs.9,25,353/- inclusive of education cess under Section 73 of the Act, 1994 along with interest under Section 75 of the Act, 1994 was confirmed. Further, a penalty of Rs.9,25,353/- under Section 78 of the Act, 1994 was imposed. A penalty of Rs. 1,000/- under Section 77 of the Act, 1994 and penalty of Rs. 200/- for every day, during which such failure continues, starting from the



first day after the due date till the actual payment of the outstanding amount of service tax under Section 76 of the Act, 1994, was also imposed.

6. The appellant challenged order dated 07.04.2008 before the learned Commissioner of Customs and Central Excise (Appeals) Chandigarh, who dismissed the appeal of the appellant vide its order dated 24.11.2008. The appellant further filed an appeal against order dated 24.11.2008 before the learned CESTAT, who partly allowed the same vide its order dated 27.03.2015. Hence, the present appeal before this Court.

7. Learned counsel for the appellant contends that the learned CESTAT erred in partly dismissing the appeal of the appellant despite the fact that the learned CESTAT had recorded a finding in favour of the appellant having suffering from financial crunch as the appellant was under BIFR. He further contends that the learned CESTAT erred in partly disallowing the appeal of the appellant in so far, though it is an admitted fact that the CESTAT while exercising powers u/s 80 of the Act, 1994, had set aside the levy of penalty u/s 76 of the Act, 1994, however once the power u/s 80 is being invoked, setting aside penalty u/s 76, the said section also empowers to set aside the penalties imposed u/s 77 and 78 of the Act, 1994. He, therefore, prays that the order dated 27.03.2015 passed by the learned CESTAT be set aside and the matter be remanded back to the learned CESTAT to decide afresh.

8. Learned counsel for the respondent does not oppose the prayer, as made by the learned counsel for the appellant.

9. We have heard learned counsel for the parties and perused the whole record of the case.



10. Relevant portion of the order dated 27.03.2015 passed by the learned CESTAT is reproduced hereunder:-

“2. We find that as noted in the related order-in-original, the appellants duly mentioned their impugned service tax liability in the ST returns for the period April, 2006 to September, 2006 and October, 2006 to March, 2007. Thus, the appellant’s claim that they are not guilty of suppression is reasonable. While there is no exemption from the impugned service tax liability merely because the appellants are under BIFR, the argument that there was reasonable cause for the failure of deposit of the impugned service tax is clearly a reasonable one in the light of the severe financial crunch which necessitated them to come under BIFR.

*3. In view of the foregoing, we partly allow the appeal only to the extent of setting aside the penalty imposed under Section 76 of the Finance Act, 1994 by invoking Section 80 of the Act *ibid.*”*

11. It would be relevant to reproduce Section 80 of the Act, 1994. The same is reproduced hereunder:-

“Section 80: Notwithstanding anything contained in the provisions of Section 76, Section 77 or Section 78, no penalty 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.”

12. From the bare reading of Section 80, it transpires that once the CESTAT has invoked the powers u/s 80 and set aside penalty u/s 76, the said provision also grants power to set aside the penalty invocable u/s 77 and 78 of the act *ibid.*



13. The CESTAT though having recorded a finding in favour of the appellant, the order passed by the CESTAT does not confer any reason for failure to set aside the penalties imposed u/s 77 and 78 of the Act.

14. The invocation of Section 80 and failure on the part of the CESTAT to set aside the penalty imposed u/s 78 is bad in law in so far once the learned Tribunal has given a finding of fact in favour of the appellant, the penalties imposed u/s 76, 77 and 78 of the Act are liable to be set aside on the sole ground itself.

15. The Tribunal erred in passing the impugned order without appreciating that the appellant is entitled to the benefit of Section 80 of the Act which categorically provides for exemption from levy of penalty once the assessee proves the failure to deposit Service Tax. Since the appellant was suffering from severe financial crunch and also undergoing proceedings under BIFR the department having failed to prove contrary the appellant was entitled to the benefit of Section 80 and setting aside of penalty u/s 77 and 78 of the Finance Act as well.

16. Since a perusal of order dated 27.03.2015 passed by the learned CESTAT shows that on the one hand, learned CESTAT observed that there was a reasonable cause for failure to deposit the service tax in the light of severe financial crunch, whereas, on the other hand, the appeal was partly allowed to the extent of setting aside the penalty imposed only under Section 76 of the Act, 1994 and not others by invoking Section 80 of the Act, which is contradictory. Therefore, the matter is remanded back to the learned CESTAT to decide the matter afresh after considering the above-referred to observations of this Court and after hearing both the parties.



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17. In view of the above, the present appeal stands disposed of accordingly.

18. All the pending application(s), if any, also stand disposed of.

(ARUN PALLI)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

March 03, 2025

pj

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No