IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/2681/2012-CU[DB]

(Arising out of Order-in-Appeal No.134-135/ST/MRT-II/2012 dated 29/05/2012 passed by Commissioner (Appeals), Customs & Central Excise, Meerut-II)

M/s Iniyar (alias Intizar Ali) **Appellant**

Vs.

Commissioner (Appeals) Customs &

Central Excise, Meerut-II **Respondent**

Appearance:

Written Submission for Appellant
Shri Mohd. Altaf (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 09/08/2018
Date of Decision & Pronouncement : 24/08/2018

FINAL ORDER NO. - **72065/2018**

Per: Archana Wadhwa

Appellants have made a request to decide the matter on merits. Accordingly, we have gone through the impugned order and have heard learned A.R.

2. Demand of duty to the extent of Rs.2,91,258/- stand confirmed against the appellant by invoking the longer period by way of issuance of show cause notice on

20/10/2010, for the period 2005-06 to 2009-10, under the category of 'Maintenance & Repair Services;. The said services were being provided by the appellant to M/s Simbhawli Sugar Ltd., Ghaziabad. In addition, Original Adjudicating Authority imposed penalty of identical amount under Section 78 of the Finance Act and of the same amount under Section 76 of the Act.

On appeal against the above order Commissioner (Appeals) upheld the confirmation of service tax but reduced the penalty under Section 76 to Rs.50,000/- and set aside the penalty under Section 78. However penalty of Rs.10,000/- was imposed under Section 77 of the Finance Act, 1994.

3. The appellant contended that he being an illiterate was not aware of the fact that the services provided by him which were primarily in the nature of manpower for doing the given work, was taxable under the category of 'Maintenance & Repair Services'. As such in the absence of any *mala fide*, the longer period of limitation was not available. He has relied upon the Tribunal decision in the case of M/s Lal Singh vs. Commissioner of Central Excise Final Order No.71153/2018 dated 25/05/2018.

4. Without going to the merits of the case, we find that Commissioner (Appeals) has set aside the penalties imposed upon the appellant by observing as under:-

> *"Thus, I observe that since in this case there is neither the deliberate action of evading the tax on the part of the respondent-appellant and nor any mensrea or fraud or willful misstatement is present, hence the imposition of the equal penalty under Section 78, is not justified and thus liable to be set aside. Further, the imposition of simultaneous penalty under Section 76 is also against the spirit of the statutory provisions in view of the proviso to Section 78 of the Act."*

5. The Tribunal in the above referred decision of M/s Lal Singh has observed as under:-

> *"3. After hearing the learned A.R. we find that merits in the above contention of the learned Advocated. The reasons and circumstances for invocation of the extended period as also for imposition of penalty under Section 78 are identical i.e. a mala fide mind. The appellate authority have already taken a view in favour of the assessee, in respect of penalty, it was*

not open to the appellate authority to hold to the contrary for invocation of longer period. Otherwise also we note that the appellant is a labourer and there being a lot of confusion in the field of service tax, would not be aware of the service tax APPEAL No.ST/2680/2012-CU[DB] 3 liability. Inasmuch as the demand stands confirmed by invoking the longer period, we hold that the same is not sustainable but for the period falling within the limitation.

4. As such we set aside the demands beyond the normal period of limitation and remand the matter to the Original Adjudicating Authority for re-quantification of demand, if any falling within the normal period of limitation, after examining the applicability of small scale notification relevant during the period."

6. In the identical circumstances Commissioner (Appeals) has set aside the penalty but has not extended the benefit of limitation in the present case. By following the Tribunal decision referred supra, we hold that the demand beyond the period of limitation is not sustainable. Consequently, penalties imposed under Section 76 and 77 are also not sustainable. Accordingly,

we set aside the demand beyond the normal period of limitation and remand the matter to Original Adjudicating Authority for re-quantification of the demand falling within the limitation period. Appeal is disposed of in above terms.

(Pronounced in Court on 24/08/2018)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Lks