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

APPEAL No. ST/51703/2015-EX[DB] With
CROSS Application No. ST/CROSS/51638/2015

(Arising out of Order-in-Appeal No. GZB/EXCUS/000/APP/232-233/2014-15 dated 28/11/2014 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Noida)

Commissioner of Central Excise & Service Tax, Ghaziabad **Appellant**
Vs.
M/s Dharam Pal Singh, Contractor **Respondent**

Appearance:

Shri Gyanendra Kumar Tripathi, Assistant Commissioner (AR), for Appellant
Shri Siddharth Tewari, Advocate &
Shri Sharad Chandra Tewari, Consultant, for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing & Date of Decision : 03/05/2018

FINAL ORDER NO.**70091/2019**

Per: Anil Choudhary

The respondent/assessee is engaged in providing manpower recruitment service/manpower service to Ghaziabad Municipality for invidious works like cleaning sanitation, etc. They are also provided supply of tangible goods services. Vide Order-in-Original dated 21/02/2014 passed by the Additional Commissioner demanding Service Tax of Rs.28,77,384/- for the period October, 2006 to March, 2011 being pursuant to SCN dated 23/04/2012 for the extended period of limitation.

2. Further, penalty was also imposed under Section 77& 78 of the Finance Act, 1994, whereas proposed penalty under Section 76 of the Finance Act, 1994, was dropped.

3. Being aggrieved by the said order, both respondent/assessee and Revenue had filed appeal before the Commissioner (Appeals) who vide impugned order was pleased to reduce the demand to Rs.26,02,271/- worked out on cum-duty basis and was further pleased to set aside penalty under Section 77& 78 of the Finance Act, 1994 and at the same time rejecting the appeal filed by Revenue for imposition of penalty under Section 76 of the Finance Act, 1994.

4. The learned Commissioner (Appeals) have observed that there is reasonable cause for non-payment of Service Tax, as the appellants were under *bona-fide* belief that the nature of work done by them like cleaning, public health and sanitation, on behalf of municipality is not excigible to Service Tax. Further, the municipality authority also held the opinion that Service Tax was not applicable on the said nature of works, being Government function. Further, there was no Clause for Service Tax in the contract for service entered into between the respondent/assessee and the municipality. Further, no Service Tax was being paid anywhere in the state of U.P. by any contractor for similar nature of the work done

by them on behalf of the municipality. Accordingly, the ld. Commissioner (Appeals) found that the provisions of Section 80 is invocable there being reasonable cause for non-deposit of Service Tax and further take notice of the fact that the respondent/assessee have deposited the full amount of Service Tax demanded before passing of the Order-in-Original.

5. Being aggrieved by the said order, Revenue is in appeal on the ground that the respondent/assessee was liable to pay Service Tax, which is demanded on the gross value received in lieu of the services provided to the municipality. The learned Commissioner (Appeals) have erred in not imposing the penalty under Section 76 of the Finance Act, 1994, as prayed by Revenue and further, erred in setting aside the penalty under Section 78 of the Finance Act, 1994. Further the amendment in the Finance Act, which was brought out with effect from 10/05/2008 provided that simultaneous penalties under Section 76 & 78 of the Finance Act, 1994 were not imposable.

6. Having considered the contentions and on perusal of the facts on record, we find that the finding of the learned Commissioner (Appeals) as to reasonable cause existed for non-payment and/or delayed payment of Service Tax have not been challenged in the Revenue appeal. Further, we find that the learned Commissioner (Appeals) have rightly recorded the existence of reasonable cause for delay in

depositing the tax and have accordingly set aside the penalty under Section 77 & 78 of the Finance Act, 1994. Thus, in this view of the matter, we dismiss this appeal filed by Revenue as being without any merits. The Cross Objection also stands disposed of. The respondent/assessee shall be entitled for consequential relief, if any, in accordance with law.

(Dictated in Court)

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

Ansari