CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Application(s) Involved:

ST/CROSS/20854/2017 in ST/21449/2017-SM

Appeal(s) Involved:

ST/21449/2017-SM

[Arising out of Order-in-Appeal No. CAL-EXCUS-000-APP-107-2017 dated 26/04/2017 passed by the Commissioner of Central Excise, Customs and Service Tax, Cochin (Appeals)]

Commissioner of Central Excise, **Customs and Service Tax** **Cochin** C.R Building, I.S Press Road, Ernakulam, Cochin - 682 018 Kerala	**Appellant(s)**

Versus

K.P Abdul Kader Managing Partner, M/s. Square Nine Mall, Kasargod, Kerala Cochin – 671 121 Kerala	**Respondent(s)**

Appearance:

Mr. Pakshirajan, Assistant Commissioner (AR)	For the Appellant
Mr. Raghavendra B. Hanjer, Advocate "Sricharan" 543, 12th Cross, 8th Main, J.P. Nagar 2nd Phase, Bangalore – 560 078	For the Respondent

Date of Hearing: 19/02/2018
Date of Decision: 19/02/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20474 / 2018

Per: S.S GARG

The Revenue has filed the present appeal against the impugned order dated 26.04.2017 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has dropped the penalty on the assessee under Section 78 by giving the benefit under Section 80. Briefly the facts of the case are that during the investigation conducted by the Department it was revealed that though the assessee had taken Service Tax Registration on 22.02.2011 they had not paid service tax during 4/2010 to 3/2012 and hence show-cause notice dated 02.04.2014 was issued demanding service tax of Rs. 13,31,213/- (Rupees Thirteen Lakhs Thirty One Thousand Two Hundred and Thirteen only) for the period from 4/2010 to 3/2012. Vide Order-in-Original the original authority confirmed the demand of Rs. 11,95,493/- (Rupees Eleven Lakhs Ninety Five Thousand Four Hundred and Ninety Three only) with interest and imposed penalty of Rs. 10,000/- (Rupees Ten Thousand only) under Section 77(2) and Rs. 11,95,493/- (Rupees Eleven Lakhs Ninety Five Thousand Four Hundred and Ninety Three only) under Section 78 of the Finance Act. Aggrieved by the said order assessee filed appeal before the Commissioner and the Commissioner (Appeals) vide the impugned order upheld the demand of service tax but dropped the penalty under Section 78 by invoking erstwhile provision of Section 80.

2. I have heard the learned AR and the counsel for the assessee who has

also filed the cross objections.

3. Learned AR for the Revenue submitted that the impugned order dropping the penalty by invoking Section 80 is wrong and not sustainable because Section 80 has been omitted w.e.f. 14/05/2015 without any supporting clause to apply Section 80.

4. On the other hand the learned counsel for the assessee submitted that the Commissioner (Appeals) has given reasons for dropping the penalty. He further submitted that Commissioner (Appeals) has observed that during the relevant time there was a confusion regarding the taxability on Renting of Immovable Property Service. He further submitted that the Commissioner (Appeals) was well within its right to invoke Section 80 to waive and set aside the penalty. For this he relied upon the following decisions:

a. *Raghuvir Motors Agencies Pvt. Ltd. Vs. CCE, Cus. & S.T, Aurangabad – 2017 (4) G.S.T.L. 57 (Tri.-Mumbai)*
b. *Udaysingrao Gaikwad SSK Ltd. vs. CCE, Kolhapur - 2017 (49) S.T.R. 78*

5. After considering the submissions of both parties and perusal of the material on record, I find that there is no infirmity in the impugned order whereby the Commissioner (Appeals) has dropped the penalty under Section 78 by invoking Section 80 which was available during the relevant time. Further I find that the Commissioner (Appeals) has given reasons for

invoking Section 80 on the ground that there was confusion regarding the taxability of Renting of Immovable Property Service during the relevant time. Therefore, I do not find any infirmity in the impugned order which is upheld by dismissing the appeal of the Revenue.

(Operative portion of the Order was pronounced
in Open Court on **19/02/2018**)

(S.S GARG)
JUDICIAL MEMBER

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