CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

SINGLE MEMBER BENCH
COURT NO. I

APPEAL NO. ST/61078/2018-ST[SM]

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-831-17-18 dated 28.03.2018 passed by the Commissioner (Appeals), Chandigarh]

M/s Chaudhary And Company : **Appellant(s)**

VS

C.C.E., Chandigarh-I : **Respondent(s)**

Appearance:
Present for the Appellant(s): Mr. Amitoz Singh, Advocate
Present for the Respondent(s): Mr. Bhasha Ram, A.R.

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Date of hearing/decision: 10.10.2018

FINAL ORDER NO. 63292/2018

Per Ashok Jindal :

The appellant is in appeal against the impugned order seeking immunity from interest and penalty under Section 78 of the Finance Act, 1994.

2. The facts of the case are that the appellant was engaged in the activity of providing Manpower Recruitment Agencies service and for October 2004 to September 2009, the appellant collected service tax on the commission part of the service provided by them but did not pay service tax thereon with the department. Later on, during the course of audit, it was found that the appellant is required to pay service tax on whole of the amount i.e. service tax + wages, thereafter the appellant paid the service tax but did not pay any interest. Accordingly, a show cause notice was issued to the

appellant demanding service tax and appropriation of the amount already paid along with interest and to impose the equivalent penalty under Finance Act, 1994. The matter was adjudicated and the demand of service tax was confirmed along with interest. The amount already paid has been appropriated. Penalty was also imposed on the appellant. Against the said order, the appellant filed the appeal before the Commissioner (Appeals) who uphold the adjudication order. Against the order of Commissioner (Appeals), the appellant is before me and praying for waiver of interest and penalty.

3. Ld. Counsel for the appellant submits that the appellant was ignorant and on pointing out, the appellant immediately paid the service tax, therefore, the interest and penalty be waived.

4. Heard the parties and considered the submissions.

5. Considering the facts that during the impugned period, the appellant was collecting service tax and not paying the same with the department, therefore the appellant cannot claim any immunity from this Tribunal. Further, in the interest of justice, I find that the show cause notice has been issued on 08.01.2013 for the period October 2004 to September 2009. Therefore, the penalty for the extended period on the appellant is not sustainable.

6. In these terms, penalty for the period of limitation equal to service tax is confirmed and the appellant is also liable to pay interest for the impugned period.

7. The appeal is disposed off in above terms.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

RAS'