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/60926/2018-ST[SM]

[Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-326-18 dated 26.02.2018 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

M/s Aay Jay Builders	:	**Appellant(s)**
VS		
C.C.E. & S.T., Chandigarh-I	:	**Respondent(s)**

Appearance:
Present for the Appellant(s): Mr. Parikshit Aggarwal, Consultant
Present for the Respondent(s): Mr. Harvinder Singh, A.R.

CORAM:

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

Date of hearing/decision: 13.03.2019

FINAL ORDER NO. 60286/2019

Per Ashok Jindal :

The appellant is in appeal against the impugned order for imposition of penalty thereon.

2. The facts of the case are that the appellant is engaged in the activity of construction services and business auxiliary services. During the course of audit of one M/s Lovely International Trust, it came to know that the appellant is providing taxable service to them and charging service tax. Thereafter, in follow up the action, an investigation was conducted at the premises of the appellant and it came to know that the appellant was availing benefit exemption under Notification No. 1/2006-CE dt. 01.03.2006 and also availing

the Cenvat credit on the capital goods used in providing output service. On pointing out, the appellant reversed the Cenvat credit along with interest. It was also found that for the quarter ending September 2010, the appellant has not paid the service tax and filed their ST-3 returns. It was also found that the appellant did not file returns for the quarter ending December 2010 within time and not paid service tax. Therefore, the proceedings were initiated against the appellant by issuance of the show cause notice dt. 26.07.2013 by invoking extended period of limitation to appropriate the amount of service tax already paid along with the interest and to impose various penalties under the Finance Act, 1994. The matter was adjudicated. The service tax already paid along with interest was appropriated and various penalties were imposed against the appellant. Against the said order, the appellant is in appeal before this Tribunal against the imposition of penalty under Section 78 of the Finance Act, 1994.

3. The Ld. Consultant appearing on behalf of the appellant submits that as it came to know that they are not entitled to avail the Cenvat credit on capital goods, they reversed the Cenvat credit along with interest and it was a bonafide mistake of the appellant. It is further submitted that although the returns for the quarter ending September 2010 and December 2010 were filed late, but the payment of service tax along with interest was made by the appellant before issuance of show cause notice. In that circumstance, it was a bonafide mistake of the appellant, therefore, no penalty is imposable against the appellant in terms of Section 80 of the Finance Act, 1994.

4. On the other hand, the Ld. A.R. opposes the contention of the Ld. Consultant and submits that it is a deliberate act of the appellant taking the Cenvat credit on capital goods and availing the benefit of exemption notification. It was also pointed out that the appellant is collecting the service tax from the service recipient and not paying the same to the ex checker; therefore, the penalty on the appellant is rightly imposed.

5. Heard the parties and considered the submissions.

6. In this case, the appellant has paid the service tax along with interest at the time of investigation itself. In that circumstance, the appellant is entitled for the benefit of Section 80 of the Finance Act, 1994 as the service tax along with interest has already been paid before issuance of the show cause notice. Further, the impugned show cause notice has been issued by invoking extended period of limitation. In that circumstance, by giving the benefit of Section 80 of the Finance Act, 1994, I drop the penalty imposed on the appellant under Section 78 of the Finance Act, 1994.

7. The appeal is disposed off in above terms.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

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