**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**SOUTH ZONAL BENCH AT CHENNAI**

**Appeal No.: ST/40051/2017**

(Arising out of Order-in-Appeal No. 156/2016 (STA-II) dated 16.09.2016 passed by the Commissioner of Service Tax (Appeals-II), Chennai)

**Smt. Sripraya Rajkumar,** : Appellant
No. 27, 4th Main Road,
R. A. Puram,
Chennai – 600 028

**Versus**

**The Commissioner of G.S.T. & Central Excise,** : Respondent
Chennai Outer Commissionerate

Appearance:-
Shri. Rabeen Jayaram, Advocate
for the Appellant
Shri. R. Subramaniyan, AC (AR)
for the Respondent

**CORAM:**

**Hon'ble Shri P Dinesha, Member (Judicial)**

Date of Hearing: 24.10.2018

**Date of Pronouncement: 31.10.2018**

**Final Order No. 42745 / 2018**

In this appeal, the assessee has assailed the penalty imposed under Sections 77 and 78 of the Service tax Act *inter alia* on the services related to Renting of Immovable Property.

2. It is the case of the appellant that they had discharged the liability by 31.03.2012 whereas the Show Cause Notice was issued on 21.04.2014; that there was litigation on the issue and that there was no finality till the Hon'ble Apex Court settled the issue which only proves the *bona fides* of the appellant for which no penalty could be levied, etc.

3. *Per contra*, Ld. AR Shri. R. Subramaniyan supported the findings of the lower authorities.

4. I have heard the rival contentions and perused the documents placed on record.

5. During the course of hearing, Ld. Advocate filed the Taxpayers Counterfoil dated 29.03.2012 and 31.03.2012 evidencing deposit towards Renting of Immovable Property Services. The date of Show Cause Notice being 21.04.2014, apparently the tax liability is paid well before that date, but however the Commissioner (Appeals) has clearly gone wrong in observing that the balance amount of Rs. 3,09,783/- was not covered in the proceedings before the Hon'ble High Court and hence, the same attracts penalty and interest.

6. It is the case of the Revenue that the service tax and interest having not paid on or before 28.11.2012, for which reason also the penalty under Section 77 and 78 was attracted. When a question was put to the Ld. AR as to the date of remittance evidenced by the Taxpayers Counterfoil, he accepted that both the payments of Rs. 1,52,169/- and Rs. 1,57,614/- were made much before the above referred date of the Commissioner (Appeals). But the fact remains that there is a delay in the payment made towards duty liability by the appellant for which the interest is mandatory. I am therefore of the opinion that the appellant is required to satisfy the adjudicating authority with regard to her claim of making payment towards the duty liability with interest including the balance portion of service tax of Rs. 752/- with interest, as observed by the Ld. Commissioner (Appeals).

7. I find that with regard to the other grievance of the assessee against the findings at paragraph 9 as to the non-payment, is not correct since the assessing officer has appropriated a sum of Rs. 3,09,783/- against the demand in the Order-in-Original which leaves only a balance of Rs. 752/- to be paid, if not paid so far.

8. A perusal of the records reveals that the appellant had questioned the legality and based only on the directions of the Hon'ble High Court of Kerala, the dispute came to be settled. This being the case, I am of the opinion that no penalty could be exigible for which reason I set aside the penalty levied. The interest being mandatory, however, the adjudicating authority has to work out the same based on my observations hereinabove, contained in paragraph 6.

9. The appeal is therefore partly allowed.

*(Pronounced in open court on* ***31.10.2018****)*

**(P Dinesha)**
Member (Judicial)

Sdd