IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. ST/57692/2013 [SM]

[Arising out of Orders in Appeal No. 73/S.TAX/APPL ID-II/988 dated 27.02.2013, passed by the Commissioner (Appeals), Central Excise & ST, New Delhi.]

For approval and signature:

Hon'ble Mr. V. Padmanabhan, Member (Technical)

M/s. Alphaa Credits Inc. **....Appellant**

Vs.

CCE & ST, New Delhi **....Respondent**

Appearance:

Shri Anup Mehra, Chartered Accountant for the Appellants
Shri M.R. Sharma, AR for the Respondent

CORAM:

Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing: 03.01.2017

FINAL ORDER NO. 50075/2017-EX [SM]

Per V. Padmanabhan

The present appeal is directed against OIA dated 27.02.2013 passed by Commissioner (Appeals), Delhi.

2. The appellant is a proprietorship firm engaged as direct sales agent for ICICI Car Finance business. The service rendered by them is covered under the definition of Business Auxiliary Services, classifiable under section 105 (zzzb) of the Finance Act, 1994. The

dispute is with reference to service tax liability during the period July 2003 to September 2004. The DGCEI commenced investigation against the appellant by issuing summon dated 10.01.2005 and issued Show Cause Notice dated 31.07.2007, in which demand was raised for payment of service tax of Rs. 3,32,294/- along with payment of interest and penalties. The Original Authority vide his order dated 31.08.2012 confirmed the demand of service tax and penalties under section 76, 77 and 78 of the Finance Act, 1994. However, when the order was challenged before Commissioner (Appeals), he upheld the payment of service tax and interest but set-aside the penalty imposed under section 76 while confirming the same under section 78.

3. With the above background, heard Shri Anup Mehra, ld. Chartered Accountant for the appellant and Shri M.K. Sharma, ld. AR for the Revenue.

4. The submission of the ld. Consultant is that even though DGCEI undertook investigation against the appellant, the appellant had already taken the registration for payment of service tax with effect from 17.11.2004. He pointed out that the registration was taken before the investigation commenced by DGCEI. He submitted that a part of service tax due was paid before commencing the investigation. However, rest of the dues were paid after commencing investigation along with interest due thereon under section 75 of the Finance Act, 1994. He submits that since the service tax due along with interest

already stands paid, there is no justification of imposing penalty under section 78 of the Finance Act, 1994.

5. Ld. AR supports the order passed by the lower authorities.

6. The service tax has not been disputed in the present proceedings. The only dispute is with reference to imposition of penalty under section 78 of the Finance Act, 1994. There has been a delay in payment of service tax under Business Auxiliary Services. However, it is on record that the appellant has voluntarily taken the registration and making payment of service tax even before the commencement of investigation. The Business Auxiliary Services was introduced as a category for payment of service tax on 01.7.2003. Various sub-categories were introduced in Business Auxiliary Services making it clear which are the services covered therein. The activities being undertaken by the appellant is in the nature of direct sales for ICICI Car Finance business. The appellant submitted that initially they were not aware that their activity was covered under Business Auxiliary Services and as soon as they knew that fact, they took registration under the amnesty scheme introduced by the Government in 2004. Subsequently, they discharged the entire service tax liability with interest.

7. On the basis of above circumstances, I am of the view that the appellant had reasonable cause for delay for compliance under Finance Act, 1994. Accordingly, I am of the view that this is a

bonafide case for waiver of penalties under section 80 of the Act. However, since the demand for service tax and interest is not disputed, I uphold the same.

8. The appeal is disposed of in the above terms.

[Dictated and pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

KL