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

Appeal No. ST/1804/2011-ST(DB)

[Arising out of Order-in-Appeal No. 365/BK/GGN/2011 dated 16.09.2011, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Delhi].

For approval and signature:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s. Nokia India Pvt. Ltd. **....Applicants**

Vs.

C.S.T. Delhi **....Respondent**

Appearance:

Shri S. Nageshwar, Advocate for the Applicants
Shri Ranjan Khanna, DR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 03.11.2016
Date of Pronouncement: 09.01.2017

FINAL ORDER NO. 50235/2017-ST(DB)

Per Archana Wadhwa:

The challenge in the present appeal is to imposition of penalties under section 77 &78 of the Finance Act 1994. It is seen that the appellant was engaged in providing taxable services and for the said purpose they were registered with the service tax department. However, they were also receiving sponsorship services from various vendors which were made taxable w.e.f.

01.05.2006 and the appellant was required to discharge its tax liability on reverse charge basis.

2. During the period relevant for the purpose of the present appeal the appellant discharged its service tax liability on payment made toward sponsorship services, however, in some case there was delays in depositing the taxes which were subsequently deposited along with deposition of interest.

3. In the above background the appellants were issued a show cause notice resulting in passing of the present orders imposing penalties upon them. During the proceedings before the lower adjudicating authority the appellants drew the attention of the authorities to the provision of sub section 73 of Section 3 the Finance act which are to the following effect:

> *"Where any service tax has not been levied or paid or has been short-levied or short paid or erroneously refunded, the person chargeable with the service tax, or the person to whom such tax refund has erroneously been made, may pay the amount of such service tax, chargeable or erroneously refunded, on the basis of his own ascertainment thereof, or on the basis of tax ascertained by a Central Excise Officer before service of notice on him under sub-section (1) in respect of such service tax, and inform the [Central Excise Officer] of such payment in writing who, on receipt of such information shall not serve any notice under sub-section (1) in respect of the amount so paid."*

As such it is the contention of the Ld. Advocate that the appellant having deposited the entire service tax before the issuance of the show cause notice, there was no requirement of issuance of any show cause notice in terms of the above provisions of law in as much as there was no suppression or misstatement on their part and all the relevant facts were being disclosed to the Revenue.

4. We also note that the entire consideration paid by the appellant to the service provider was being reflected by them in their tax return and it was only a mere delay in depositing the service tax or a fact of inadvertent mistakes in not including the value in some cases.

5. In terms of the said provisions of law, in case of non-levy or short levy of service tax, if the same is paid either by the appellants themselves or as ascertained by the central excise officers before the service and notice to him, no notice is required to be served. Explanation 2 added to the said section w.e.f. May 2012 also makes it clear that no further litigation would be taken up by the Revenue authorities. Explanation 2 is reproduced below:

> *"Explanation 2 : For the removal of doubts, it is hereby declared that no penalty under any of the provisions of this Act or the rules made there under shall be imposed in respect of payment of service tax under this sub section and interest thereon."*

6. We also note that CBEC vide its letter no. 137/167/2006-CX-4 dated 03.10.2007 has clarified that if tax and interest is paid before show cause notice, all proceedings (which includes proceedings under Section 78 & 77 of the Act) under the Act are concluded.

7. Otherwise also we find that it is not a case of any suppression or misstatement in as much as the fact of entering into the sponsorship agreement with the services provider was duly brought to the notice of the Revenue and the appellant was discharging its service tax liabilities in respect of said agreement. As such it cannot be said that there was any malafide intention on the part of the

assessee. If that be so no penalties are required to be imposed. Accordingly we set aside the penalties imposed upon the appellant and allow his appeal to that extent.

[Order Pronounced in the open Court on 09.01.2017]

(V. Padmanabhan)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

Bhanu