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

Service Tax Appeal No. ST/1669/2010-ST[DB]
[Arising out of Review Order No. 114/BPL/2009 dated 23.08.2010 passed by Commr. (Appeals)Madhya Pradesh]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

M/s. Casyon Technologies Solutions ...Appellant

Vs.

C.C.E. Bhopal …Respondent

Appearance:
Mr. Sandeep Mukherjee (Advocate) for the Appellant
Ms. Neha Garg (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing/ Decision.12.01.2017

Final Order No. 50436 /2017

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 23.08.2010 passed by the Commissioner (Appeals) Customs and Central Excise, Bhopal.

2. Brief facts of the case are that during the disputed period, the appellant had entered into the agreement with Madhya Pradesh Consultancy Organization Ltd., Bhopal, (MPCON) for joint collaboration of IT and computer implementation and management projects for Rajya Shiksha Kendra, Bhopal. Such services provided by the appellant fall under the taxable category of Consulting Engineer Service. For providing such taxable service, the appellant had received Rs.

44,32,690/- from MPCON as advance, but did not discharge the service tax liability as the appellant, during the material time, was not registered with the Service Tax Department. The Service tax demand of Rs. 4,83,383/- was confirmed against the appellant along with interest and penalties under different provisions were also imposed. The amount of Rs. 4,83,383/- deposited by MPCON as service tax liability of the appellant was appropriated in the adjudication order. On appeal, the Ld. Commissioner (Appeals) has upheld the adjudged demand.

3. The Ld. Consultant submits that the appellant is not contesting its case on merits. The prayer in this appeal is for extending the benefit of Section 80 of the Finance Act, 1994 for non-imposition of penalty under Section 76, 77 and 78 *ibid*. To claim the bonafides of the appellant, the Ld. Consultant submits that though the appellant has raised the bill on 30.03.2007 on Ms. MPCON for Rs. 44,32,590/-, but by deducting the service tax amount of Rs. 4,83,383/-, the balance amount was paid by MPCON to the appellant and the service tax amount was directly deposited by it into the Government account. Since the service tax liability has been discharged by MPCON, which has been appropriated in the impugned order, no malafides can be attributed for levy of penalty on the appellant. Thus, he prays that the benefit of Section 80 *ibid* should be extended for non-imposition of penalties.

4. On the other hand, the Ld. DR appearing for the Respondent reiterates the findings recorded in the impugned order. She further submits that there is a gap of more than 2 years in payment with Service Tax by M/s MPCON and that the invoices issued by the appellant clearly reflects that it has claimed the service tax and as such, was

aware of its liability for payment of service tax; the said fact is evident from the bank statement available in file. Thus, she submits that the imposition of penalties by the authorities below are proper and justified.

5. Heard both the sides and perused the records.

6. The fact is not in dispute that the appellant had not collected any service tax in excess of what has been claimed in the invoice and retained the said amount with it in order to defraud the Government revenue. Since the amount of service tax claimed by the appellant was deposited by MPCON into Central Government account as per the policy adopted by them, the service tax cannot further be claimed from the appellant. Thus, in this case, no malafides can be attributed to the appellant, justifying imposition of penalty. Therefore, we are of the view that penalties imposed by the authorities below are liable to be set aside. However, since the service tax in question was not deposited within the stipulated time frame and deposited belatedly by MPCON on behalf of the appellant, we are of the view that the appellant is liable to pay interest on such delayed payment of service tax.

7. Therefore, the impugned order is set aside and the appeal is allowed to the extent of setting aside the penalties imposed in the impugned order. Appeal is disposed of in above terms.

(Dictated and pronounced in the open court)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Neha