IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No.ST/1565/2011-ST [DB]

[Arising out of Order-in-Appeal No.316 (DKV) ST/JPR-I/2011 dated 26.07.2011 passed by the Commissioner (Appeals), Central Excise, Jaipur]

For approval and signature:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B. RAVICHANDRAN, 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?	
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?	
4	Whether Order is to be circulated to the Departmental authorities?	

R.S. Metals Pvt. Ltd. …Appellant

Vs.

C.c.E., Jaipur-I … Respondent

Present for the Appellant : Mr.Kumar Vikram, Advocate
Present for the Respondent: Mr.Ranjan Khanna, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 21.11.2016

FINAL ORDER NO. _56412/2016_

PER: S.K. MOHANTY

The Service Tax Authorities have confirmed the demand of service tax of Rs.31,490/- alongwith interest under

Intellectual Property Right service (IPR) for the period October, 2004 to March, 2005. Besides penalty under Section 76, 77 & 78 were also imposed on the appellant.

2. Heard both sides.

3. The submissions of the appellant are that the amount of service tax confirmed in the adjudication order has already been deposited and the appellant is not contesting such liability. Further, the appellant also agrees to pay the interest for delayed payment of service tax. The grievance of the appellant is with regard to imposition of penalty by the authorities below. The appellant submits that since non-payment of service that was due to bonafide belief that no service tax was payable under the IPR service, as the same was introduced on 10.09.2004, the benefit of Section 80 of the Finance Act, 1994 should be extended to the appellant for non-imposition of penalty under Section 76, 77 & 78 (supra).

4. We find that the service tax on the IPR service was introduced w.e.f. 10.09.2004 and the period involved in this case is from October, 2004 to March, 2005. Thus, non-payment of service tax in this case cannot be attributable to suppression, misstatement etc. and can be construed as a genuine reason for non-payment of tax within the stipulated time frame. Since the amount of tax has been paid by the appellant during the course of investigation, the benefit of

Section 80, in our opinion, should be available to the appellant. Therefore, the penalties imposed under Section 76, 77 & 78 *ibid* by the authorities below are set aside and the appeal is allowed to the extent of setting aside such penalties only. The appeal is disposed of.

[Dictated and pronounced in the open Court)

(B. RAVICHANDRAN) **MEMBER (TECHNICAL)**	**(S.K. MOHANTY)** **MEMBER (JUDICIAL)**

Anita