IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 31.1.2017

Appeal No. E/620/2011-EX.(DB)

(Arising out of Order-in-Appeal No. 435(DKV)ST/JPR-I/2010 dated 9.12.2010 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur-I)

CCE, Jaipur-I Appellant

Vs.

M/s Bharti Hexacom India Ltd. Respondent

Appearance

Shri G.R. Singh, D.R. - for the appellant

Shri Hemant Bajaj, Advocate - for the respondent

CORAM:**Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 50599/2017

Per Justice Dr. Satish Chandra:

The present appeal is filed by the department against the Order-in-Appeal No. 435/2010 dated 9.2.2010. The period of dispute is March 2006 & February 2007.

2. The sole issue of the department is pertaining to the cancellation of the penalty under Section 76 of the Finance Act, 1994.

3. Heard Shri G.R. Singh, ld. DR and Shri Hemant Bajaj, l.d Counsels for the parties.

4. After hearing both the parties, it appears that an appeal was filed by the respondent against the impugned order, (Service Tax Appeal No.1865/2011 dated 22.6.2015) where the appeal was allowed by setting aside the impugned order with consequential relief. The Tribunal has followed the ratio laid down in the cases of ***Supreme Industries Ltd.*** – 2014-TIOL-115-CESTAT-MUM and ***Aditya Polysack Pvt. Ltd.*** – 2015-TIOL-996-CESTAT-DEL.

5. When the impugned order was set aside by the Tribunal with consequential relief then nothing survives against the assessee. Hence, the cancellation of penalty by the Commissioner (Appeals) is justifiable.

5. In view of the above, the appeal filed by the department is dismissed.

(Dictated & pronounced in open Court)

(Ashok K. Arya) (Justice Dr. Satish Chandra)
Member (Technical) President

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