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

Appeal No. ST/55546/2013-ST(SM)

[Arising out of Order-in-Appeal No. 222(RDN)ST/JPR-I/2012 dated 11.10.2012, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Jaipur].

M/s. RK Cable Network ....Applicants

Vs.

C.C.E. Jaipur-I ....Respondent

Appearance:

Ms. Rinky Arora, Advocate for the Appellants
Shri R.K. Mishra, DR for the Respondent

CORAM:
Hon'ble Ms. Archana Wadhwa, Member (Judicial)

Date of Hearing: 02.02.2017

FINAL ORDER NO. 50656/2017-ST(SM)

Per Archana Wadhwa:

The appellant is only challenging penalty imposed upon them in terms of Section 76, 77 & 78 of the Finance Act 1994, while admitting the duty liability under cable operator services for the period 16.08.2002-09.01.2004.

2. The contention of the Ld. Advocate appearing for the appellant is that as soon as they were pointed out their tax liability by the Revenue, the same was deposited by them and in as much as it was the new levy and there was lot of confusion in the same they were under the bonafide belief that they are not covered by the service tax slab. They relied upon another decisions of the Tribunal in the case of Kiran Cable Network Vs. CCE Jaipur-I vide their Final Order No. A/FO/50453/2014-SM(BR) dated 11.02.2014

wherein the benefit of section 80 was extended to the appellant by observing as under:

> *"It is seen that the appellants are not contesting the said duty confirmation, which they have deposited but the challenge in the present appeal is only to imposition of penalties. I find that the service tax in respect of cable services was levied with effect from 16.08.2002. The period in the present appeal is 16.08.2002 to 24.03.2004 and the Show Cause Notice stands issued on 27.07.2007. The initial stand of the appellants before the visiting officers was that they were not aware of their liability to pay the service tax and as soon as it was pointed out by the Revenue, they deposited the service tax along with interest. In such a scenario, I agree with the Ld. Advocate that when the levy was new and the service was provided with MSO, there could be some belief that the appellants were not liable to pay any service tax and it may not be a case for any mala fide. As such, I deem it fit to extend the benefit of Section 80 of the Finance Act, 1994 to the appellants while confirming the duty as not contested, set aside the penalties imposed under Sections 76 and 78 of the Act and allow the appeal accordingly."*

3. In as much as the facts of the present case are identical to the facts of the above case, I set aside the penalty imposed upon the appellant under various sections, while confirming the demand of service tax as not contesting. Appeal is disposed of in the above manner.

[Dictated and pronounced in the open Court]

(Archana Wadhwa)
Member (Judicial)

Bhanu