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

Appeal No. ST/58220/2013-ST(SM)

[Arising out of Order-in-Original No. 17/Commr/ST/CHW/2013 dated 29.03.2013, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Bhopal].

M/s. Integral Construction Co. Pvt. Ltd. ....Applicants

Vs.

C.C.E. Bhopal ....Respondent

Appearance:

Shri Anil Sood, Advocate for the Appellants
Shri S. Nunthuk, DR for the Respondent

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

Date of Hearing: 02.02.2017

FINAL ORDER NO. 50657/2017-ST(SM)

Per Archana Wadhwa:

The appellant is engaged in removal of extra burden in the mining area. As a result of investigation, a view was entertained by the Revenue that such activities would fall under the taxable category of "site formation and clearance, excavation services." The appellant got themselves registered with the Department w.e.f. 01.01.2006 but were not paying the service tax as the services recipient i.e. South Eastern Coal Field had taken up the matter with the Board and have sought clarification from them. Such clarification came from the Board on 12.11.2007 clarifying that the services undertaken by the appellant are taxable under the said category. Thereafter the appellant paid the entire service tax.

2. In the above scenario proceedings were initiated against the appellant by way of issuance of the show cause notice dated 16.06.2008 proposing penalty under section 76, 77 & 78 of the Finance Act 1994. The notice culminated into the impugned order passed by the Commissioner imposing penalties.

3. The appellants are not challenging the confirmation of demand and their only grievance is that as the matter was in doubt and was being taken up by the service recipient with the highest body of the Revenue and having deposited the entire amount of tax subsequent to the clarification there was no requirement for initiation of the proceedings in terms of section 73 of the Act. Otherwise also, the submissions of the Ld. Advocate that it is proper case for invocation of the provisions of section 80 of the Finance Act. Accordingly, he prays for setting aside the penalties.

Reliance also stands placed on various decisions.

4. Ld. DR appearing for the Revenue reiterates the findings of the Commissioner.

5. I find that the Hon'ble High Court of Karnataka in the case of ***CST, Bangalore Vs. Prasad Bidappa 2012 (26) STR 4 (KAR), CE & ST Bangalore Vs. Adecco Flexoline Workforce Solutions Ltd. 2012 (26) STR 3 (KAR), CST Bangalore Vs. Master Clean 2012 (25) STR 439 (Kar),*** has held that when the assessee deposits the entire duty, the proceedings cannot be started against him for imposition of penalties in terms of section 73 of the Act. I also find force in the plea that as the matter was under confusion and was only clarified subsequently the provisions of section 80

would be attracted, thus not calling for any penalty. Reliance on the said point can be made to the following cases:

i) ***Gajanand Aggarwal Vs. CCE Bhubaneswar 2009 (13) STR 138 (Tri-Kol)***

ii) ***Bajaj Travels Ltd. Vs. CCE Delhi – 2012 (25) STR 417 (Del)***

iii) ***Alstom Projects India Ltd. Vs. CCE Delhi 2009 (15) STR 63 (Tri-Del)***

iv) ***Svenpa Systems Vs. CCE Bangalore 2010 (19) STR 891 (Tri-Bang.)***

6. In view of the above, I set aside the penalties imposed on the appellant. At this stage, Ld. Advocate submits that there is some differentia duty which has been calculated against them on account of change of rate of service tax. The said fact would be looked into by the field officers and the small differential duty, if any, would be calculated accordingly after giving an opportunity to the appellant. The appeal is disposed of in the above terms.

[Dictated and pronounced in the open Court]

(Archana Wadhwa)
Member (Judicial)

Bhanu