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

Appeal No. ST/58565/2013-ST(SM)
[Arising out of Order-in-Appeal No. IND-CEX-000-APP-83-2013 dated 05.03.2013, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Indore].

M/s Diamond India **....Applicants**

Vs.

C.C.E. Indore **....Respondent**

Appearance:

Shri Jatinder Singh, Advocate for the Appellants
Shri Dharam Singh, DR for the Respondent

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

Date of Hearing: 07.02.2017

FINAL ORDER NO. 50736/2017-ST(SM)

Per Archana Wadhwa:

The appellant is engaged in providing services under the category of management, maintenance and repair. They were also providing services to Municipal Corporation Nagar, Panchayat etc. for construction of drainage. By entertaining the belief that the said services are not attracted to service tax, value of the same was not included in the ST-3 returns filed by the assessee.

2. Thereafter, on scrutiny of the ST-3 returns and comparing same with the income tax returns it was found that during the period 2004-09 to 2010 the appellant had paid service tax short to the extent of Rs.3,47,089/-. Accordingly, proceedings were initiated against that by way of issuance of show cause notice on 27.05.2011. The said proceedings resulted in passing of the

impugned order confirming the demand and imposing penalties under section 76,77 and 78 of the Finance Act 1994.

3. The appellant's contention is that even though the demand in question was barred by limitation but they deposited the same without raising the objection of limitation. As such he only prays for setting aside the penalty on the ground that there was a bonafide belief on its part for non including value of services provided to the Municipal Corporation etc. The appellant being the small scale tax payer, a lenient view should be taken and the benefit of section 80 should be extended to them. He relies upon the Tribunal's decision in the case of ***Prince Thermal India Pvt. Ltd. Vs. CCE Nagpur 2013 (30) STR 394 (Tri-Mum).***

4. As there is no challenge to the confirmation of the demand, I confirm the same. As regards, penalty, I find favour with the appellant's contention that there could be some dispute about the taxability of the service tax provided to the said corporations, which is leading to a bonafide belief on the part of the assessee. As such by invoking provisions of section 80 of the Finance Act 1994, I set aside the penalties imposed upon the appellant.

5. Appeal is disposed of in the above terms.

[Dictated and pronounced in the open Court]

(Archana Wadhwa)
Member (Judicial)

Bhanu