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

Service Tax Misc. Application No. ST/50775/2016
Service Tax Appeal No. ST/2475 & 2599/2012-[DB]
[Arising out of Order-In-Appeal No. 110/BPL/2012 dated 31.05.2012 passed by Commissioner (Appeals) Bhopal]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

M/s. Mehrotra Buildcon Pvt. Ltd. ...Appellant
C.C.E. & S.T. Bhopal

Vs.
C.C.E. & S.T. Bhopal …Respondent
M/s. Mehrotra Buildcon Pvt. Ltd.

Appearance:
Mr. Sanjay Grover (Advocate) for the Appellant
Mr. Ranjan Khanna, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

Date of Hearding/Decision.24.01.2017

Final Order No. 50746-50747/2017

Per S.K. Mohanty:

The applicant has filed the Misc. Application for early hearing of appeal. We find that on similar facts, the Revenue has filed the appeal against the impugned order. Thus, by allowing the Misc. Application, we take up both the appeals for final hearing.

2. Against the impugned order dated 31.05.2012 both the Revenue as well as the assessee has filed appeal before this Tribunal. The grievance of Revenue is that dropping of penalties

in the impugned order is not in conformity with the Service Tax Statute. The assessee has filed the appeal on the ground that free issue of diesel for rendering out site formation service should be excluded for the purpose of determination of the value for levy of service tax.

3. Heard both the sides and perused the records.

4. We find that this Tribunal in the case of the appellant itself vide Final Order No. 52549/2016, dated 06.07.2016, has allowed the appeal holding that free supply of diesel shall not be included in the value of service for the purpose of determination of the service tax liability. Thus, respectfully following the Coordinate Bench decision, we allow the appeal of the assessee. We find that Ld. Commissioner (Appeals) has rightly invoked Section 80 of the Finance Act, 1994 for setting aside the penalties against the Respondent. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellant. The appeal filed by the Revenue is dismissed.

(Dictated and pronounced in open court)

(B. Ravichandran)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Neha