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

ST Appeal No. ST/51347/2016-ST[SM]
[Arising out of Order-In-Appeal No. BHO-EXCUS-001-app-185-15-16 dated 10.02.2016 passed by Commissioner (Appeals) Bhopal]

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

1	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	

M/s Shiv Shakti Engineering Services …Appellant(s)

Vs.

C.C., C.E. & S.T.Gwalior …Respondent(s)

Appearance:
Mr. Deepak Kr. Vajpayi (Advocate) for the Appellant
Mr. Dharam Singh (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 02.08.2016

Final Order No. 56431 /2016

Brief facts of the case are that during the period 2008-2012, the appellant had provided Works Contract Service to Madhya Pradesh Transmission Company Ltd., Bhopal (MPPTCL). The service tax attributable to such taxable service was not deposited by the appellant, for which the department initiated Show Cause proceedings, which culminated in the adjudication order dated 27.01.2004 in confirming the service tax demand of Rs. 7,52,458/-. Besides, penalties were imposed under Section 76,77 and 78 of the Finance Act, 1994. On appeal, the Ld. Commissioner (Appeals) vide the impugned order dated

10.02.2016 has upheld the adjudged demand. Hence, the present appeal is before the Tribunal.

2. The Ld. Consultant appearing for the appellant submits that the appellant is a proprietorship concern and during the material time was not aware of its liability to pay the tax on provision of the taxable service. He submits that when the service tax officers visited the factory and informed the appellant regarding the tax liability on provision of service to M/s MPPTCL, the appellant voluntarily deposited Rs. 5,84,962/- and the balance amount after completion of the adjudication proceedings. It is his submission that the charges of fraud, collusion, mis appropriation, with intent to payment of service tax cannot be leveled against the assessee inasmuch as no specific findings to that effect have been recorded by the authorities below in the respective orders. Thus, he pleads for the benefit of Section 80 *ibid* for non-imposition of penalties.

3. Ld. DR, on the other hand, reiterates the findings recorded in the impugned order. He further submits that the fact of payment of service tax on execution of the contract as per the work order was known to the appellant in the year 2008 through the letter of the Chief Engineer, MPPTCL, Jabalpur. Since the appellant did not get itslef registered and had not filed periodic returns, it is exposed to the penal consequences provided in the statute.

4. I have heard the Ld. Counsel for both sides and perused the records.

5. I find that before adjudication of the matter, the appellant had paid Rs. 5,84,962/-, which has been appropriated in the adjudication order and the balance amount of tax alongwith interest was paid immediately after adjudication of the dispute. The authorities below have not specifically alleged/ concluded regarding the involvement of the appellant in any fraudulent activities with intent to defraud the Government Revenue. It is not the case of revenue that the appellant recovered the service tax amount from the service receiver and had not deposited the same with the Government Exchequer. Thus, I am of the view that the benefit of Section *80* ibid should be extended to the appellant for non-imposition of penalty under Section 76, 77 and 78 *ibid.*

6. In view of above, the impugned order to the extent of imposition of penalties is set aside and the appeal is allowed in favour of the appellant.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

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