CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 51291 of 2014

(Arising out of order-in-appeal No. 195(ST)/RPR-I/2013 dated 13.11.2013 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Chhattisgarh)

DATE OF HEARING : 01.03.2017
DATE OF DECISION : 01.03.2017

CCE&ST, Raipur …. **Appellant**
(Rep by Sh. Sanjay Jain, DR)

VERSUS

M/s Gopal Steel …. **Respondents**
(Rep. by NONE)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. ASHOK K. ARYA, MEMBER (TECHNICAL)

FINAL ORDER NO. 52144/2017

PER JUSTICE (Dr) SATISH CHANDRA:

The present appeal is filed by the Department against the order-in-appeal no. 195(ST)/RPR-I/2013 dated 13.11.2013 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, Chhattisgarh.

2. The brief facts of the case are that, during the period under consideration (April 2006 to August 2007), the assessee-

Respondents were registered under the "Business Auxiliary Service" and engaged in the trade of arranging purchase and sale of various Iron & Steel products i.e sponge iron, ingots, billets etc. of various manufacturers on commission basis. The assessee-Respondents have not paid the Service Tax, so the Service Tax was demanded for Rs. 10,70,156/- along with penalties under Section 76, 77 & 78 of the Finance Act, 1994. The adjudicating authority vide the impugned order has dropped the penalty under Section 76 of the Finance Act, 1994. Being aggrieved, the Department has filed the present appeal.

3. List revised. None appeared on behalf of the assessee-Respondents. We have heard Shri Sanjay Jain, learned DR for the Department.

4. After considering the totality of the facts and circumstances of the case, it appears that the penalties under Section 77 and 78 of the Finance Act, 1994 have also been levied. It is not fair on the part of the Department to file the Appeal for the reason that the penalty under Section 76 was not levied, especially when the penalties under Section 77 and 78 of the Finance Act, 1994 were also levied. Needless to mention that, if the penalty under Section 76 is levied, then also the quantified amount will be meagre one which is below the prescribed limit as per the CBEC's Circular F.No.390/Misc/163/2010-JC dated 17.12.2015. Further, it may be mentioned that as far as the imposition of penalty under Section 76 and 78 of the Finance Act, 1994 is concerned, the provisions are

mutually exclusive. Where conditions warranting imposition of penalties under Section 78 exist, penalty under Section 76 cannot be levied. This view is supported by the Hon'ble High Court of Punjab & Haryana at Chandigarh in the case of **Commissioner of Central Excise vs First Flight Courier Ltd.,** 2011 (22) STR 622 (P&H), wherein it was held that :

> *"Penalty - Double jeopardy - Penalty under Sections 76 and 78 of Finance Act, 1994 mutually exclusive from 10-5-2008 - Penalty under said provisions whether simultaneously not imposable for period before 10-5-2008 - Section 76 ibid providing for penalty for failure to pay tax while Section 78 ibid providing for penalty for suppression of taxable value - Section 78 ibid providing for higher amount of penalty is more comprehensive - Penalty under Section 76 ibid not justified if penalty already imposed under Section 78 ibid - High Court order dated 12-7-2010 on similar issue holding penalty under Section 76 ibid not imposable when the same imposed under Section 78 ibid, applicable - Question of law not arises - Appeal dismissed - Sections 76 and 78 ibid".*

Therefore, we find no reason to interfere with the impugned order. Hence, the order passed by the Commissioner (Appeals) is hereby sustained along with the reasons mentioned therein.

6. In the result, the appeal filed by the Department is dismissed.

(Pronounced in the open court on 01.03.2017)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay