CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 60216 of 2013

(Arising out of Order-in-Appeal No. 116(ST)/RPR-I/2013 dated 25.06.2013 passed by the Commissioner of Central Excise & Customs (Appeals), Raipur)

DATE OF HEARING : 01.03.2017
DATE OF DECISION : 01.03.2017

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

VERSUS

Shri Shailendra Upadhyay .... **Respondents**
(Rep by NONE)

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

FINAL ORDER NO. 52159/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

The present appeal is filed by the assessee-Appellants against the impugned order-in-appeal no. 116(ST)/RPR-I/2013 dated 25.06.2013 passed by the Commissioner of Central Excise & Customs (Appeals-I), Raipur.

2. On merits, it appears that vide the impugned order total demand of Service Tax of Rs. 5,96,581/- along with interest was upheld and the penalties levied under Section 76, 77 and 78 were allowed.

Being aggrieved, the Department has filed the present appeals against the waiver of penalties.

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

4. From the record it appears that during the period under consideration (October, 2005 to October, 2010), the assessee-Respondents were not registered with the Department and had not discharged the Service Tax liability on the understanding that the Service Tax has to be discharged when they receive the Service Tax from the recipient. Later on, after realizing the bonafide mistake they got themselves registered with the Department and discharged their Service Tax liability voluntarily after receiving the same from the recipient-BSNL. Due to this confusion there was a delay in discharging the Service Tax liability. But the fact remains that the Service Tax was paid along with interest soon after the receipt of the same from BSNL. In the instant case, being the proprietary concern, the assessee-Respondent was under the bonafide belief to deposit the Service Tax only after receipt of the same. By keeping in mind the ratio laid down by the Hon'ble Gujarat High Court in the case of **CCE vs Port Office,** 2010 (19) STR 641 (Guj), the Commissioner (Appeals) has waived the penalty.

5. By considering the totality of the facts and circumstances of the case, we are of the view that it is a fit case for invoking the provisions of Section 80 of the Finance Act, 1994 which provides that if a reasonable cause is shown, the penalty can be waived. Hence, we

find no infirmity in the impugned order and the same is hereby sustained along with the reasons mentioned therein.

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

(Dictated & pronounced in the open court)

(ASHOK K. ARYA)
MEMBER (TECHNICAL)

(JUSTICE Dr. SATISH CHANDRA)
PRESIDENT

Golay