IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No.ST/1432/2011-ST [DB]

[Arising out of Order-in-Appeal No.310 (CB) CE/JPR-II/2011 dated 20.07.2011passed by the Commissioner (Appeals), Central Excise, Jaipur-II]

Hindustan Zinc Limited …Appellant

Vs.

C.c.E., Jaipur-II … Respondent

Present for the Appellant : Mr.Karan Sachdev, Advocate
Present for the Respondent: Ms.Neha Garg, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing : 09/03/2017
Date of Pronouncement: 17/03/2017

FINAL ORDER NO. _______________

PER: B.RAVICHANDRAN

The appeal is against order dated 30.06.2011 of Commissioner (Appeals), Jaipur-II. The appellant's are engaged in the manufacture of non-ferrous metals. They are also registered for payment of service tax. The dispute in the present appeal relates to the liability of the appellant to pay service tax on the rent received by the appellant from their clients, who have not lifted the sold scrap within the allotted time. During the course of argument, the ld. Counsel for the appellant submitted that they are not contesting the service tax liability and are only praying for waiver of penalty imposed on them. Reliance was placed on the provisions of Section 77 of Finance Act, 2010, which dealt with validation of action taken in respect of tax liability under the category of renting of immovable property. The ld. Counsel further submitted that the tax liability under this category was subject matter of various litigations and accordingly, there is no ground for imposing penalties on the appellants.

2. We have heard both the sides and perused the appeal records. The tax liability is not being contested. On the penalties imposed on the appellant, we find that the scope of tax entry on "renting of immovable property" has been a subject matter of large number of litigation. Retrospective amendments were also carried out in the provisions of Finance Act, 1994 for validation of past levy in view of adverse decisions of the Courts. Keeping this in view, we find imposition of penalties is not justifiable. Accordingly, by invoking the provisions of Section 80, we hold that the penalties imposed on the appellant under Section 76, 77 and 78 are to be set aside. The appeal is allowed to this limited extent.

[Pronounced in the open Court on 17/03/2017)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita