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/1370/2011-ST [DB]

[Arising out of Order-in-Original No.08-ST/PKJ/CCE/ADJ/2011 dated 26.05.2011 passed by the Commissioner (Adjudication), Central Excise, New Delhi]

C.S.T., Delhi …Appellant

Vs.

Airport Authority of India … Respondent

Present for the Appellant : Ms.Neha Garg, D.R.
Present for the Respondent: Mr.Anil Kumar Kathuria,Advocate

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

Date of Hearing/decision: 20/03/2017

FINAL ORDER NO. 52501/2017

PER: S.K. MOHANTY

Revenue is in appeal against the impugned order dated 26.05.2011 passed by the Commissioner, Service Tax, New Delhi. Impugned order has been assailed on the ground that dropping of proposal for imposition of penalty under Section 76, 77 and 78 of the Finance Act, 1994 therein is not proper and justified inasmuch as, the show cause notice has alleged suppression of facts and was issued by invoking the extended period of limitation.

2. Heard both sides and examined the case records.

3. The ld. Commissioner has invoked Section 80 ibid for non-imposition of penalty under Section 76, 77 and 78. He has recorded the following findings in the impugned order:-

> *"18.3 M/s. AAI has contended that there was no deliberate withholding of information or suppression of facts and they are a Public Authority under the Central Government and there is no personal gain or guilty intention to evade any tax. The non-payment was on account of ignorance and the mistake was corrected as soon as it was brought to their notice. I find that M/s. AAI is a Department of the government of India and no personal interest of any individual is involved in nonpayment of tax or non-compliance of legal requirement deliberately. It is viewed that being a government undertaking, there is absence of personal gain for an individual and it cannot be held that there was a suppression or willful misstatement or contravention of the provisions of law with the guilty intentions.*
>
> *18.4 Since M/s.AAI have discharged their liability of the service tax alongwith the interest before the issuance of Show Cause Notice, I hold that all the proceedings under any of the provision of the act shall come to an end and no penalty under any of the section can be imposed on them as per the undertakingal Circular No.137/167/2006-CX-4 dated 03/10/2007. It is clear in terms of Section 73(3) that no show cause notice is warranted in the case if the duty is deposited prior to the issuance of the show*

cause notice in terms of aforesaid sub-section of the Act, and as such no penal action is required"

4. On going through the adjudication order, we find that there is no element of suppression on the part of the appellant in defrauding the service tax. On pointing out the mistake that the appellant is liable to pay service tax, the amount of service tax in question was deposited by the appellant with interest. Thus, in terms of sub-section (3) of Section 73 ibid, there was no necessity for issuance of show cause notice, only for imposition of penalty.

5. Therefore, we do not find any infirmity in the impugned order so far as dropping the liability for imposition of penalty on the respondent is concerned. As such, we dismiss the appeal filed by Revenue.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita