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

Service Tax Appeal No. ST/892/2012-ST[DB]
[Arising out of Order-In-Appeal No. IND(CEX)000/AA/106/12 dated 12.04.2012 passed by Commr. (Appeals) Indore]

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

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. Pawan Pamecha ...Appellant

Vs.

C.C.E. Indore …Respondent

Appearance:
On merits for the Appellant
Mrs.Neha Garg, DR for the Respondent

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

Date of Hearing/ Decision.22.12.2016

Final Order No. 56472 /2016

Per S. K. Mohanty:

The appellant is not contesting the service tax demand confirmed against it. The prayer in this appeal is confined to waiver of penalty imposed under Section 76 of the Finance Act, 1994. The submissions of the appellant are that the entire amount of service tax alongwith interest was deposited by the appellant before adjudication of the matter. Thus, the appellant pleads for waiver of penalty in terms of Section 80(2) *ibid.*

2. None appeared for the appellant, Filed written submission to decide the case on merits. Heard the Ld. DR for Revenue.

3. The service tax in this case has been confirmed under the taxable category of renting of immovable property service. Levy of service tax on such service was highly contentious and there were divergent views by different judicial forums. We find that sub-section (2) was inserted in Section 80 by the Finance Act, 2012 w.e.f. 28.05.2012, providing for non-imposition of penalty if service tax with interest is paid on the impugned service within six months of enactment of Finance Bill, 2012. In this case, since the appellant had deposited the entire amount of service tax with interest prior to insertion of sub- section (2) of Section 80 *ibid,* we are of the view that penalty can be waived under such amended provisions. Therefore, the impugned order is set aside and the appeal is partly allowed to the extent of imposition of penalty only.

(Dictated and pronounced in the open court)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Neha