IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:08.05.2017

Service Tax Cross No.52208/2014 alongwith
ST/57718/2013-ST (SM)

[Arising out of Order-in-Appeal No.53-54/BPL/2012 dated 25.02.2013 passed by the Commissioner (Appeals), Customs & Central Excise & Service Tax, Bhopal]

CCE, Bhopal Appellant

Vs.

Anurag Soni (Prop.) Respondent

Appearance

Rep. by Shri Himansu Khemuka, Advocate for the appellant.
Rep. by Shri K. Poddar, DR for the respondent.

Coram: Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.53193/2017

Per B. Ravichandran:

The Revenue is in appeal against order dated 25.02.2013 of Commissioner of Central Excise (Appeals), Bhopal. The respondents are engaged in providing taxable service under the category of "Commercial Training & Coaching Centre Service". For non-payment of service tax for the period April, 2009 to March, 2011, proceedings were initiated against the respondent. The Original Authority confirmed service tax liability of Rs.5,06,031/- and imposed penalties under Section 76, 77 and 78 of the Finance Act, 1994. On appeal, vide the impugned order, the Commissioner (Appeals) restricted the demand to normal period, holding that the extended period cannot be invoked against the respondent. The demand of Rs.83,394/- for normal period was confirmed by the impugned order along with penalty of equivalent amount under Section 78.

2. The Revenue is aggrieved by the said order on the ground that the demand for extended period should have been confirmed by the Commissioner (Appeals).

3. Heard both the sides and perused the appeal records.

4. Ld. Counsel for the respondent submits that the said order of the Commissioner (Appeals) was challenged by the respondent before the Tribunal. The Tribunal vide Final Order NO.50007 of 2017 dated 3.1.2017 allowed the appeal filed by them by setting aside the demand for extended period and also penalty under Section 78. However, the claim of the respondent for exemption under notification no.6/2005-ST was not allowed. The impugned order has already been upheld with reference to time bar and setting aside the penalty imposed under Section 78. Nothing survives in the impugned order for the Department to challenge.

5. I have perused the Final Order dated 3.1.2017 of the Tribunal. The said order upheld the findings of the Commissioner (Appeals) regarding time bar. It was further held that when the demand was not sustainable for the extended period, penalty under Section 78 was also not imposable. Such penalty was set aside. In view of the decision of the Division Bench involving the very same impugned order, I find that there is nothing in the present appeal, which can be examined for a different decision. There is no issue surviving for consideration. Accordingly, the appeal by the Revenue is dismissed. The Cross objection also stands disposed of.

[Order dictated & pronounced in open court]

(B. Ravichandran)
Member (Technical)

Ckp.