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/2571/2012 - ST [DB]

[Arising out of Order-in-Appeal No.IND/CEX/000/APP/147/12 dated 29.05.2012 passed by the Commissioner (Appeals), Central Excise, Indore]

M/s.Premium Global Commodities & Derivatives Pvt. Ltd. …Appellant

Vs.

C.C.E., Indore … Respondent

Present for the Appellant : None
Present for the Respondent: Mr.Sanjay Jain, D.R.

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

Date of Hearing/Decision: 11/04/2017

FINAL ORDER NO. __53390/2017_

PER: S.K. MOHANTY

Brief facts of the case are that the appellant was registered with the service tax department for providing the taxable service of forward contract. During the disputed period (financial year 2005-06) service tax demand of Rs.8,166/- was confirmed alongwith interest on the ground that the appellant had short paid such amount towards service tax liability. The basis of the demand as recorded in the impugned order is extracted herein below:-

> I find that as per the accounting requirement the amount written off should be debited to the Profit and Loss Account but the appellant had produced no evidence that the same was debited as an expenditure to the Profit and Loss Account and in the absence of the same there could not be any conclusion arrived in favour of the appellant. I find that there was difference between 'charging the amount of duty as an expenditure' to the Profit and Loss Account and 'writing off amount' by debit to Profit and Loss Account. Hence it was observed by the adjudicating authority that as per the accounting standards prescribed by the Institute of Chartered Accountant of India and the provisions of the Companies Act, 1956, only expenses were required to be reflected/debited to the Profit and Loss Account. As per the basic principles of double entry accounting and the mercantile system of accounting even the losses incurred had to be reflected on asset side of the Balance Sheet. In the instant case, the amount had accrued to the appellant and it remained in their account and was treated by them as Financial transaction and it would form part of the service charges extended by the appellant to their clients and hence chargeable to Service Tax. Therefore, I agree with the findings of the adjudicating authority that the appellant is required to deposit an amount of Rs.8,166/- as their service tax liability in terms of provisions of Section 73 of the Finance Act, 1994, on the amount of Rs.68,050/- appearing as income by way of written-off, accordingly I hold.

2. None appeared for the appellant. Heard ld. D.R. for Revenue.

3. We find from the grounds of appeal that the appellant has raised the preliminary ground that amount of bad debts written off in the profit & loss account during the financial year 2005-06 is not towards the brokerage income and as such, no service tax demand can be levied or confirmed on such written off amount in the books of accounts. However, on perusal of the case records, we do not find any supporting documents produced by the appellant to claim such benefit. Therefore, we are of the view that service tax demand confirmed by the authorities below is in conformity with the service tax statute.

However, considering the fact that the amount of Education Cess has been wrongly calculated as Rs.1,361/- on the service tax demand of Rs.6,805/-, instead of Rs.136/- (2% of the service tax liability), the demand should be accordingly, modified. Further considering the fact that the entire amount of service tax demand alongwith interest was deposited by the appellant, we are of the view that Section 80 of the Finance Act, 1994 can be invoked in the present case for non-imposition of penalties under Section 76, 77, 78 ibid.

4. Accordingly, the impugned order is set aside and the appeal is allowed to the extent of penalties imposed in the impugned order. The appeal is disposed of in the above terms.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita