IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-SM

COURT –III

Service Tax Appeal No.ST/136/2012 [SM]

[Arising out of Order-in-Appeal No.IND/CEX/000/APP/426/11 dated 20.10.2011 passed by the Commissioner of Central Excise & Service Tax (Appeals), Indore]

M/s. Sterling Agro Industries Ltd. …Appellant

Vs.

C.C.E., Indore … Respondent

Present for the Appellant : Mr.Manish Saharan, Advocate
Present for the Respondent: Mr.S.Nunthuk, D.R.

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

Date of Hearing: 01.03.2017
Pronounced on :30.05.2017

FINAL ORDER NO. 53576/2017

PER: S.K. MOHANTY

Imposition of penalty under Section 76 of the Finance Act, 1994 for non-payment of service tax under reverse charge mechanism during the period 2006-07 to 2008-09 is the subject matter of present dispute.

2. Brief facts of the case are that the appellant is a manufacturer of non-excisable exempted goods, which were exported by them during the disputed period. For procurement of orders for the manufactured goods, the appellant paid commission to overseas agent, which by virtue of Section 66A

of the Act has become taxable under reverse charge with effect from 18.04.2006. On scrutiny of records, the Department informed the appellant regarding non-payment of service tax. Accordingly, the appellant deposited the disputed service tax amount alongwith interest on 22.03.2009. Thereafter, on 15.04.2010,the Department issued the Show Cause Notice, seeking *interalia*, for recovery of the service tax amount and for imposition of penalties under various provisions of the Finance Act, 1994. The matter was adjudicated vide order dated 31.03.2011, wherein the demands proposed in the Show Cause Notice dated 15.04.2010 were confirmed, excepting imposition of penalty under Section 76 ibid. The said adjudication order was reviewed by the Department for non-imposition of penalty under Section 76 and accordingly, under the direction of the jurisdictional Commissioner of Service Tax, the Department has filed the appeal before the ld. Commissioner (Appeals). The appeal was disposed of by the ld. Commissioner (Appeals) vide the impugned order dated 02.11.2011 in upholding imposition of penalty under Section 76 ibid. Hence the present appeal before the Tribunal.

3. Ld. Advocate appearing for the appellant submitted that there were considerable doubts regarding payment of service tax under reverse charge mechanism by the service recipient during the disputed period and the issue regarding payment of service tax by the service receiver was finally settled by the judgement of Hon’ble Bombay High Court in the case of Indian

National Ship Owner's Association vs. Union of India – 2009 (13) S.T.R. 235 (Bom.). Thus, the ld. Advocate submitted that since on pointing out the mistake by the Department, the appellant had promptly deposited the service tax alongwith interest, the benefit of Section 80 ibid can be invoked for non-imposition of penalty under Section 76 ibid.

4. On the other hand, the ld. D.R. appearing for the respondent reiterated the findings recorded in the impugned order and further submitted that since the reasonable cause has not been explained by the appellant for non-payment of service tax within the stipulated time, benefit of section 80 ibid cannot be extended.

5. Heard both sides and perused the records.

6. It is an admitted fact on record that the appellant was liable to pay service tax under reverse charge mechanism on the services received from the foreign agents. However, payment of service tax by the service receiver was highly contentious, which was finally resolved by the Hon'ble Bombay High Court in the case of Indian National Ship Owner's Association (supra). Since, the Department has not specifically proved with any tangible evidence of involvement of the appellant in the activities concerning fraud, collusion etc., with intent to evade payment of tax; and in view of the fact that upon detection of mistake, the appellant had promptly

deposited the service tax alongwith interest into the Government Exchequer, I am of the view that the benefit of Section 80 ibid can be invoked in this case for non-imposition of penalty under Section 76 ibid.

7. Therefore, the impugned order is set aside and the appeal is allowed to the extent of imposition of penalty under Section 76 ibid.

[Pronounced in the Open Court on 30/05/2017]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita