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

Service Tax Appeal No. 830 of 2012

[Arising out of Order-In-Appeal No. 80/BPL/2012 dated 16.4.2012 passed by Commissioner (Appeals) Customs & Central Excise, Bhopal]

M/s. M P Veneers Pvt. Ltd. **Appellants**

Vs.

Commissioner of Customs, Central Excise, Bhopal **Respondent**

Appearance:

Shri B L Narasimhan with Shri Rachit Jain,
Advocates for the Appellants
Shri Sanjay Jain, DR for the Respondent

CORAM:

Hon'ble Mr S K Mohanty, Member (Judicial)
Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing/ Decision: 09.05.2017

FINAL ORDER NO . 53687 /2017

Per S K Mohanty:

This appeal is directed against the impugned order dated 16.4.12 passed by the Commissioner (Appeals), Central Excise, Bhopal.

2. Brief facts of the case are that the appellant is engaged in manufacturing of decorative veneers, falling under Chapter 44 of Central Excise Tariff Act, 1985. During the disputed period, the appellant entered into an agreement with M/s. Funky Wave Trading Co. Ltd., Singapore for identifying suitable sellers of teak timber rounds, logs etc. required as raw material for manufacture of veneer. During the course of audit, the Service Tax department observed that the appellant is liable to pay Service Tax on purchase commission paid to the overseas agent under reverse charge mechanism. Subsequently, the appellant deposited the Service Tax along with interest in the capacity of recipient of such services. Upon deposit of the said amount, the department proceeded against the appellant for imposition of penalty under Section 78 of the Finance Act, 1994.

3. Learned Advocate appearing for the appellant submits that payment of Service Tax under reverse charge mechanism by the service recipient was highly contentious and the matter was resolved by the Hon'ble Bombay High Court in the case of ***Indian National Shipowners Association vs. Union of India [2009 (13) STR 235 (Bom)]*** on 11.12.2008. Thus, he submits that the charges of suppression, mis-statement, etc. cannot be leveled in this case for imposition of penalty under section 78 *ibid*. In this context, learned

Advocate has relied on the various decisions of the Tribunal to state that penalty cannot be imposed in the absence of any element of suppression, mis-statement etc. He also submits that since it is a case of revenue neutral situation, inasmuch as the Service Tax paid by the appellant is available as cenvat credit, penalty cannot be imposed on this ground also.

4. On the other hand, learned DR appearing for the respondent reiterates the findings of the lower appellate authority.

5. Heard both sides and perused the records.

6. The fact is not in dispute that before initiation of show cause proceedings, the appellant had deposited the Service Tax along with interest attributable to services received by it from the overseas service provider. The issue as to whether service tax was liable on the recipient of service was contentious one, which stand finally resolved by the judgment of the Hon'ble Bombay High Court in the case of ***Indian National Shipowners Association*** (supra). Thus, it cannot be said that appellant was involved in the activities concerning fraud, collusion, suppression etc., with intent to evade payment of service tax. Therefore, we are of the view that imposition of penalty under section 78 *ibid* can be set aside in this case. Further, we find that this Tribunal in various cases has set

aside the penalty imposed under section 78 ibid in the similar facts and circumstances of the cases .

7. In view of the above, we don't find any merits in the impugned order so far as imposition of penalty on the appellant is concerned. Accordingly, after setting aside the impugned order, we allow the appeal in favor of the appellant to the extent of penalty confirmed therein.

(dictated and pronounced in the open court)

(S K Mohanty)
Member(Judicial)

(V. Padmanabhan)
Member(Technical)

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