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/57187/2013-ST [DB]

[Arising out of Order-in-Appeal No. 05(ST)/RPR-1/2013 dated 08.01.2013 passed by the Commissioner (Appeals-I), C.E &C Service Tax, Central Excise Building, Raipur.]

M/s. Rajasthan Associates ...Appellant

Vs.

C.C.E., Raipur …Respondent

Appearance:

Mr. Jatin Mahajan, (Advocate) & Rajendra Agarwal, CA, for the Appellant
Ms. Neha Garg, DR & Sanjay Jain, for the Respondent

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

Date of Hearing/Decision.26.05.2017

Final Order No. 54774 /2017

Per S.K. Mohanty:

Non payment of service tax for providing constructional of complex service to Chhattisgarh Housing Board and Public Works

Department by the appellant is the subject matter of present dispute

2. The ld. Advocate appearing for the appellant submitted that the appellant is not contesting the service tax demand along with interest confirmed by the authorities below. However, he submitted that the penalties under Section 77 and 78 of the Finance Act cannot be imposed on the appellant on the ground that there was reasonable cause for non-payment of service tax within the stipulated time frame. The ld. Advocate has submitted various adjudication orders passed by the Department in favour of different similarly placed assessees, wherein the proposals made in the Show Cause Notices for imposition of penalties were dropped.

3. On the other hand the ld. DR appearing for the respondent reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. On perusal of case records we find that the Department has not specifically brought out any evidence to prove that the appellant did not pay the service tax due to suppression, willful mis-statement etc. Rather on perusal of the adjudication orders submitted by the appellant, we find that the benefit of Section 80 has been extended to the assessees on the ground that there were bonafide reason for non-payment of service tax. Further, the Revenue has not produced any evidence to show that against

the adjudication / appellate orders, further appeals were filed by the Revenue.

6. Therefore, we are of the view that the benefit of Section 80 *ibid* can be extended in this case for non imposition of penalties under Section 77 and 78 *ibid.* Accordingly, the impugned order is set aside and appeal is allowed to the extent of penalties imposed on the appellant.

7. The appeal is disposed of accordingly.

(Operative Portion and pronounced in the open court)

(V. Padmanabhan)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

Sakshi