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

Service Tax Appeal No. ST/9, 206, 698/2009-[DB]

[Arising out of Order-In-Appeal No. 190-CE/MRT-I/08 dated 31.10.2008 passed by Commr. (Meerut)]
[Arising out of Order-In-Appeal No. 190-CE/MRT-I/08 dated 31.10.2008 passed by Commr. (Meerut)]
[Arising out of Order-In-Appeal No. 03-CE/MRT-I/09 dated 23.01.2012 passed by Commr. (Meerut)]

CCE Meerut-I ...Appellant
CCE Meerut-I
M/s. Ashoka Trading Co.

Vs.

M/s. Ashoka Trading Co. …Respondent
M/s. Ashoka Trading Co.
C.C.E. Meerut-I

Appearance:
None appeared for the Appellant
Mr. Sanjay Jain, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. Ashok K. Arya, Member (Technical)

Date of Hearing/Decision:11.07.2017

Final Order No. 55100-55102 /2017

Per S.K. Mohanty:

Feeling aggrieved with the impugned order dated 14.11.2008 passed by the Commissioner (Appeals), Customs and Central Excise, Meerut, both the Revenue as well as the assessee have filed appeal before this Tribunal.

2. Heard Ld. DR for Revenue. None appeared for the assessee, despite notice.

3. On going through the case records, we find that the Revenue appeals are not maintainable on the ground of litigation policy as per the instructions issued by CBEC dated 17.12.2005 from File F. No. 390/Misc/163/2010-JC. Accordingly, we dismiss the appeals filed by the Revenue.

4. So far as the assessee's appeal is concerned, we find that by invoking the extended period of limitation, the service tax demand was confirmed in respect of C&F Agent Service provided by the assessee to Nestle India. Further, on perusal of the impugned order, we find that the Ld. Commissioner (Appeals) has dropped the penalties imposed under Section 76 and 78 of the Finance Act, 1994. Since the penalty imposed on the appellant under Section 78 ibid has been set aside by the Ld. Commissioner (Appeals), it cannot be said that the appellant had indulged in the activity of suppression, misstatement, fraud etc., with intent to evade payment of service tax. Thus, service tax demand confirmed by invoking the extended period of limitation cannot be sustained. Accordingly, the impugned order to the extent of confirming the demand of service tax on the assessee, is set aside and the appeal is allowed in favour of the assessee.

5. All the appeals are disposed of in above terms.

(Dictated and pronounced in the open court)

(Ashok K. Arya) Member(Technical)	(S. K. Mohanty) Member (Judicial)

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