IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:7.06.2017

Service Tax Appeal No.59507/2013-CU(DB)

[Arising out of Order-in-Original No.71/GB/2013 dated 30.04.2013 passed by the Commissioner of Service Tax, New Delhi]

CST, ST, Delhi Appellants

Vs.

Blazeflash Courier Ltd. Respondent

Appearance:

Rep. by Shri Sanjay Jain, DR for the appellant/Department.
Rep. by none for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.55146/2017

Per S.K. Mohanty:

Revenue has filed this appeal against the impugned order dated 30.04.2013 passed by the Commissioner of Service Tax, New Delhi. The grievance in this appeal is that dropping of penalty in the adjudication order is not proper and justified. Inasmuch as non-payment of service tax was not attributable to the reason of bonafide belief that the same is not payable by the respondent.

2. Heard the ld. DR for the Revenue. None appeared for the respondent, despite notice.

3. On perusal of the impugned order, we find that the Ld. Adjudicating Authority has recorded the following findings to hold that the penalties under Section 76 and Section 78 of the Finance Act, 1994 cannot be imposed on the appellant. The said paragraph is extracted below:-

> "67. Now, lastly I take up the issue of penalties purposed in the SCN under Section 76 and 78 of the Act liable to be imposed on the notice for the alleged Acts of omission & commission detailed in the SCN. To this I find in the present situation, where the notice has deposited the whole amount of service tax payable for the impugned period alongwith interest for delayed payment during the course of investigation itself and that too before issue of impugned SCN question of imposing proposed penalties do not arise in term of provision of Section 73(3) read with Section 80 of the Act inasmuch as the noticee has always been under the bonafide belief that no service tax was payable by him on the income received as a co-loader, on the reimbursements received from their agencies as a pure agent and transport services received in respect of transferring their courier parcels from one office to other as also discussed in detail in preceding paragraphs. Further, the Hon'ble Apex Court in the case of **M/s.Rashtriya Ispat Nigam** has held that once whole amount of duty is deposited before issue of SCN, no penalty is imposable on the party. "

4. In view of the fact that the Adjudicating Authority has specifically recorded the observation that the non-payment of service tax by the respondent was due to reasonable belief that the same was payable by it, we are of the view that the provisions of Section 80 ibid has been rightly invoked for non-imposition of penalties. Further, we also find that the service tax liability on the respondent as a co-loader was not free from doubt and was a matter of clarification by the Board.

5. Therefore, we do not find any infirmity in the impugned order. Accordingly, the appeal filed by the Revenue is dismissed.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.