IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING/DECISION : 03/08/2017.

Service Tax Appeal No. 58589 of 2013

[Arising out of the Order-in-Original No. Commissioner/RPR/ST/46/2013 dated 28/03/2013 passed by The Commissioner of Central Excise & Customs, Raipur.]

M/s Hindustan Steelworks Construction Ltd. Appellant

Versus

CCE, Raipur Respondent

Appearance

Shri Rudra Jhoti, Advocate – for the appellant.

Shri Sanjay Jain, Authorized Representative (DR) – for the Respondent.

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

Final Order No. 55822/2017 Dated : 03/08/2017

Per. B. Ravichandran :-

The appeal is against order dated 28/03/2013 of Commissioner of Central Excise, Raipur. There is no dispute with reference to tax liability in the present appeal. The only grievance of the appellant is that they have paid full service tax with applicable interest before the adjudication of the tax liability by the Original Authority. The Original Authority in his earlier order dated 30/07/2007 held that though penalty under Section 78 is not imposable on the appellant, penalty under Section 76, subject to a maximum of amount equal to tax demand, is imposable. The appellant filed appeal before the Tribunal. The Tribunal vide the final order No. 407/2011 dated 26/07/2011 remanded the matter back to the Original Authority to examine and decide the claim of the appellant for waiver of penalty under Section 80. The present order was in pursuance of such remand direction.

2. The learned Counsel appearing for the appellant submitted that they are a Government of India Undertaking. During the disputed period they did not discharged service tax in view of the interpretation involved about the nature of service and its correct classification for tax liability. The departmental officers conducted investigation and the notice was issued to demand tax and to impose penalties. The case was adjudicated earlier by the Commissioner who clearly recorded that there is no intention on the part of the appellant to evade payment of service tax. The non-payment of service tax has resulted on account of difference in interpretation of the relevant definitions. He recorded that in his considered opinion that the party being a Government of India Undertaking, it would not be justified to allege that there was an intend to evade payment of service tax. With this reasoning, he did not impose penalty under Section 78. However, he imposed penalty under Section 76. In the remand order, in spite of the Tribunal directing the Original Authority to examine the applicability of Section 80 for the penalty under Section 76, the Original Authority held that failure to pay service tax is not

attributable to any reasonable cause. No such reasonable cause could be adduced by the appellant. As such, he confirmed the imposition of penalty under Section 76. The learned Counsel submitted that the findings are contrary to factual and legal position pleaded by the appellant in the earlier round of litigation, before the Tribunal and also before the Original Authority who passed the impugned order.

3. The learned AR reiterated the findings of the Original Authority. He submitted that Section 76 is on a different footing when compared to Section 78. No malafide need be established for penalty under Section 76. The Original Authority using his discretion declined to invoke Section 80 in the facts and circumstances of the case.

4. We have heard both the sides and perused the appeal records. Admittedly, in the first round of litigation it is categorically recorded by the Original Authority that the issue involved is interpretation of relevant definition of tax entries. The non-payment of service tax by the appellant is due to such difference in interpretation. Further, noting that the appellant is a Government of India Undertaking, he did not impose penalty under Section 78. We note that the above-mentioned reasons noted for non-payment of service tax by the Original Authority in his earlier finding itself is sufficient to invoke the provisions of Section 80. In the impugned order, the Original Authority records that the appellant did not adduce sufficient reasonable cause for

failure to pay service tax. We note that the reasonable cause for non-payment of service tax during the material time has already been taken note of by the Original Authority. Further, we also note that the appellant who is a Government of India Undertaking has fully discharged the service tax with applicable interest before even the service tax liability was confirmed in the first adjudication order. We also note that appellant being a Government company creates a rebuttable presumption of non-existence of any malafide on their part. Though Section 76 penalty is not with reference to malafide intend, we note that this is also a penal provision for non-payment of service tax in time. Section 80 provides for waiver of penalty under Section 76 if reasonable cause is shown for non-payment of tax in time. Having examined the facts and circumstances mentioned in the impugned order and the reason for non-imposition of penalty under Section 78 recorded in the first order, we are satisfied that the present case is fit for invoking the provision of Section 80 for waiver of penalty under Section 76. Accordingly, we set aside the impugned order and allow the appeal with reference to the penalty under Section 76.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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