CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi.

Date of hearing/decision: 22.08. 2017

S.T. Appeal No. 59464 of 2013 – SM
(Arising out of order-in-appeal No. 188(VC)ST/JPR-II/2013 dated 12.06.2013 passed by the Commissioner (Appeals) Central Excise, Jaipur-II).

M/s RSWM Limited Appellant

Vs.

CCE, Jaipur-II Respondent

Appearance:

Ms. Sukriti Das, Advocate for the appellant
Ms. Kanu Verma Kumar, AR for the respondent

Coram:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Final Order No. 56307/2017

Per: **Ashok Jindal**:

The appellant is in appeal against the impugned order and contesting only on the penalties.

2. The facts of the case are that the appellant are engaged as overseas agents for providing services and procuring orders for supply of goods by the service recipient. For that activity, the appellant was receiving commission from the foreign agent and was required to pay service tax under Section 66A of the Finance Act, 1994 for the period April 2006 to July 2006. As the appellant did not pay service tax, therefore, a show cause notice was issued for demand of service tax alongwith interest and to impose penalty. The matter was adjudicated the demand of service tax was confirmed which was

already paid by the appellant and same was appropriated and penalties under Sections 76, 77 and 78 of the Act were also imposed. Aggrieved from the said order, the appellant is before me.

3. Heard the parties considered the submissions.

4. I find that during the impugned period, the vires of Section 66A was under challenge before the Hon'ble High Court of Bombay in the case of ***Indian National Shipowners Association vs. Union of India -2009 (13) STR 235 (Bom.) w***herein it has been held that the liability under reverse charge on services received from abroad is effectively only from 18.04.2006 after introduction of Section 66A of the Finance Act, 1994. As the assessee was under bonafide belief, than the vires of the Section 66A was under challenge, therefore, the appellant is entitled for the benefit of Section 80 of the Finance Act for waiver of penalties. Accordingly, by invoking provisions of Section 80 of the Finance Act, I drop the penalties imposed on the appellant.

5. In these terms, the appeal is disposed of.

(Dictated and pronounced in the open Court).

(Ashok Jindal)
Member (Judicial)

Pant