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

Date of Hearing/Decision: 17.8.2017

Appeal No. ST/55403/2013-SM

(Arising out of Order-in-Appeal No. 127(RDN)ST/JPR-II/2012 dated 25.10.2012 passed by the Commissioner, Central Excise (Appeals), Jaipur)

M/s Suraj Enterprises Appellant

Vs.

CCE, Jaipur Respondent

Appearance

Ms. Rinky Arora, Advocate - for the appellant

Shri K. Poddar, D.R. - for the respondent

CORAM: **Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Final Order No. 56388/2017

Per Ashok K. Arya :

M/s Suraj Enterprises is in appeal against the Order-in-Appeal No. 127/2012 dated 25.10.2012 whereunder penalties imposed on the appellant have been sustained.

2. Both sides have been heard.

3. It is a fact that that the appellant had paid service tax amounting to Rs. 8,78,336/- along with interest on 8.11.2008 and 7.3.2009 before the issue of Show Cause Notice dated 11.1.2010. This fact has also been mentioned in the Show Cause Notice dated 11.1.2010 issued to the appellant. When it is so, following the

decision of the Tribunal in the case of *S.K. Electro Engineers Vs. CCE, Nagpur* - 2015 (39) STR 686 (Tri.-Mumbai), penalties need not be imposed on the appellant. The Tribunal in the said case has observed as under :

> "**4.** It is not in dispute that in the present case, the appellant had discharged the Service Tax liability along with interest thereon much before the issue of show cause notice and therefore, the provisions of Section 73(3) should have been given effect to, and the matter should have been closed. As the show cause notice has been issued much after the payment of statutory liabilities, there was no reason to issue the notice except for imposition of penalties. In view of the specific provisions incorporated in Section 73(3) of the Finance Act, 1994, the imposition of penalties is clearly not warranted. Accordingly, I set aside the same and allow the appeal. I make it clear that only penalties under Sections 76, 77 & 78 of the Finance Act, 1994 have been set aside. There is no provision for waiver of late fee required to be paid under Rule 7(c) of the Service Tax Rules, 1944 and the appellant is liable to discharge the same."

3.1 Thus, following the Tribunal's decision (supra), the impugned order is set aside and appeal is allowed with consequential relief, if any, to the appellant.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

RM