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

<u>COURT-III</u>

Date of hearing: 30.08.2017

Appeal No. ST/50723/2017-SM
[Arising out of the Order in Appeal No. 06 (AK) ST/JPR/2017 dated 20.01.2017, passed by the Commissioner (Appeals), Customs and Central Excise, Jaipur]

Shri Mahadeo Cotton Mills Ltd. … Appellant

Vs.

CC & ST, Udaipur …Respondent

Appearance:
Present Shri Kr. Vikram, Advocate for the appellant
Present Shri R.K. Mishra, DR for the respondent

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)

<u>FINAL ORDER No. 56612/2017</u>

<u>Per S.K. Mohanty</u>

This appeal is directed against the impugned order dated 20/01/2017 passed by the Commissioner of Customs, Central Excise (Appeals), Jaipur.

2 The appellant is not contesting the adjudged service tax demand and the interest amount confirmed in the original order. However, the appellant is in appeal against the impugned order on the ground that Section 80 of the Finance Act, 1994 can be invoked for non imposition of penalty under Section 78 *ibid*. To support such stand, the appellant pleads that the service tax liability under reverse charge mechanism by the service receiver was highly contentious and the issue was finally resolved by the

Hon’ble Bombay High Court in the case of *Indian National Ship Owners Association V/s CCE* 2009 (13) STR 235 (Bom.). The appellant has also relied on Final Order No. 54653-54654/2016 dated 24/10/2016 passed by this Tribunal in the case of *RSWM Ltd*., wherein the benefit of Section 80 *ibid* was extended to the appellant.

3 Heard both sides and perused the case records.

4 In this case, the appellant was liable to pay service tax on the commission amount paid to its foreign agent for procuring various services under reverse charge mechanism. Admittedly, the said amount has not been paid by the appellant at the appropriate time and was paid belatedly along with interest. With regard to payment of service tax under reverse charge mechanism as per the provisions of Section 66A *ibid,* the issue was highly debatable and there were divergent views by different judicial forums. The issue was finally resolved by the Hon’ble Bombay High Court in the case of *National Ship Owners Association (supra*). In view of the fact that the issue with regard to payment of service tax by the service receiver was not free from doubt at the material time, it cannot be said that non-payment of tax is attributable to suppression, fraud, collusion with intent to evade such tax. Thus, I am of the considered view that the benefit of Section 80 *ibid* can be extended in this case to the appellant for non-imposition of penalty under Section 78 ibid.

5 Therefore, the impugned order to the extent it imposed penalty on the appellant under Section 78, is set aside and the appeal is allowed in favour of the appellant.

[Order dictated and pronounced in the open court]

(S.K.Mohanty)
Member (Judicial)

Rekha