IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Service Tax Appeal No. 50387 of 2017

[Arising out of Order-in-Appeal No 437 (AK)ST/JPR/2016 dated 15.11.2016 passed by the Commissioner (Appeals), Customs & Central Excise & Service Tax, Jaipur (Raj)]

M/s. Rangoli Ceramics Pvt Ltd. **Appellants**

Vs.

Commissioner of Central Excise & ST, Jaipur **Respondent**

Appearance:
Shri Ankit Totuka, Advocate for the Appellants
Shri K Poddar, AR for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Date of Hearing /decision: 1.09.2017

FINAL ORDER NO. 56845 /2017

Per Ashok Jindal:

The appellant is in appeal challenging the penalties imposed on them under section 76 and 78 of the Finance Act.

2. The facts of the case are that during the impugned period 1.4.2007 to 31.3.2011, the appellant was providing two services namely, renting of immovable property service and erection, commissioning and installation services. Under the premise that

renting of immovable service is not taxable and erection, commissioning and installation services is within the threshold limit of exemption, they did not pay the service tax but after the decision of Apex Court that renting of immovable property is liable to be taxed, the appellant within six months paid the service tax along with interest on entire services. After services of renting of immovable property and erection and commissioning and installation services taken together, the taxable service shall exceed the threshold limit of exemption limit. The appellant paid the entire amount of service tax along with interest. Later on, the show cause notice was issued and on adjudication various penalties were imposed on the appellant. And it has been observed in the adjudication order itself that the appellant has paid entire amount of service tax on the disputed services along with interest before issuance of show cause notice. Despite that in the facts and circumstances, penalty under section 76 and 78 of the Finance Act, 1994 has been confirmed against the appellants. Aggrieved from the said imposition of penalties, the appellant is before me.

3. Heard both the parties and considered the submissions.

4. The facts which are not in dispute are that initially the services of renting of immovable property was under challenge but after the decisions of the Hon'ble Apex Court, assessee became liable to pay the service tax on renting of immovable property and paid the service

tax. It is also a fact that if quantum of renting of immovable property service is taken out of total services provided, then the erection, commission and installation service the appellants falls within the threshold limit of exemption.

5. In that circumstances, as the appellant having paid the entire amount of service tax along with interest before issuance of show cause notice, the proceedings were not to be initiated against the appellant as per section 73(3) of the Finance Act, 1994. The proceedings initiated against the appellant are only to harass the appellant. In that circumstances, the appellant is entitled for the benefit of section 80 of the Finance Act, therefore, the penalties imposed on the appellant are set aside.

7. In these terms, the appeal is allowed.

(pronounced in the open court)

(Ashok Jindal)
Member(Judicial)

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