IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –II

Service Tax Appeal No.ST/53152/2014 - CU [DB]

[Arising out of Order-in-Appeal No.124/GB/2013 dated 02.09.2013 passed by the Commissioner of Service Tax, Delhi]

M/s.V.K.Aggarwal & Co. …Appellant

Vs.

C.S.T., Delhi … Respondent

Present for the Appellant : Mr.Rakshit Verma, Advocate
Present for the Respondent: Mr.A. Jain, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing / Decision : 21/09/2017

FINAL ORDER NO. 57033/2017

PER: B.RAVICHANDRAN

The appeal is against order dated 02.09.2013 of Commissioner of Service Tax, New Delhi. The appellants are engaged in construction of commercial buildings and they are registered with the Department for payment of Service Tax. The dispute in the present appeal is only with reference to penalty imposed on the appellant under Section 78 of Finance Act, 1994.

2. The ld. Counsel appearing for the appellant submitted that the Service Tax liability for the period 2006-07 to 2010-11 was raised by a demand dated 24.10.2011. The lower authority confirmed their Service Tax liability to the tune of Rs.1,04,80,972/- under the category of Commercial or Industrial Construction Service. The ld. Counsel submitted that they have paid the confirmed tax liability and they are in appeal only against the penalty imposed on them under Section 78. He submitted that all that contracts are involving supply of goods and provision of service. These contracts should have been subjected to tax only under works contract service, with effect from 01.06.2007. However, they are not going to the merits of the demand at this stage. They are pleading this point only to show that subsequent to the Hon'ble Supreme Court decision in the case of Commissioner of Central Excise, Kerala vs. Larsen & Toubro Ltd. – 2015 (39) STR 913 (SC), the legal position stood clarified with reference to composite contracts. Admittedly, the legal position as laid down by the Hon'ble Supreme Court will assist the appellant in defending the case against imposition of penalty. Even otherwise, the ld. Counsel submitted that they had disputes with the contractors regarding payments and they were in many arbitration proceedings, which created serious difficulty

in discharging Service Tax liabilities in a timely manner. Accordingly he pleaded for waiver of penalty imposed on them under Section 78.

3. The ld. AR reiterated the findings of the original authority. He submitted that the appellant did not readily make available the required documents and accounts during the investigation, which shows that they are not bonafidely following the legal provisions.

4. We have heard both sides and perused the appeal records.

5. Para 15.2 of the impugned order records that the contracts awarded to the noticee involved both goods and services. Even in the calculation chart discussed by the original authority, it is mentioned that contracts are of composite nature involving supply of materials and provision of service. Admittedly, such contracts will be liable to Service Tax only with effect from 01.06.2007. In the present proceeding the Service Tax liability has been confirmed under construction service. However, since the merits of the case are not contested and the tax demanded has been deposited, we are only dealing with the prayer of the appellant for waiver of penalty imposed under Section 78.

6. Considering the above facts recorded, we find that this is a fit case for invoking provisions of Section 80 for waiving aside the penalty. Accordingly, without any observation on merits of the case, as the tax liability has been already paid not contested, we set aside the penalty under Section 78 and allow the appeal to that extent.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)	**(S.K. MOHANTY)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Anita