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

Date of Hearing/Order: 16.10.2017

Appeal No. ST/60497/2013-DB

(Arising out of Order-in-Original No. 123/GB/2013 dated 29.8.2013 passed by Commissioner , Service Tax, New Delhi)

M/s Gurcharan Singh — Appellant

Vs.

CST, New Delhi — Respondent

<u>Appearance</u>

Shri Sunil Minocha, Advocate - for the appellant
Shri R.N. Sharma, Advocate

Shri Ranjan Khanna, D.R. - for the respondent

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 57207/2017

Per B. Ravichandran :

The appeal is against the order dated 29.8.2013 of Commissioner of Service Tax, New Delhi. The appellants are engaged in construction activities liable to tax under construction of complex service as well as commercial or industrial construction service. In the present appeal, the appellants are not disputing their tax liability. They have fully discharged the tax liability along with the interest before issue of the Show Cause Notice which resulted in the impugned order.

2. The ld. Counsel submitted that the construction services had a large number of litigation regarding service tax liability and also various statutory amendments in the tax entry. He pleaded that as soon as the enquiry against the appellant was initiated by the officers, they have checked up the tax liability and duly discharged the same with applicable interest for delayed payment. The only prayer is that for waiver of penalty imposed under Section 77 and 78. He pleaded that the proceedings itself need not be initiated against them in the case and could have been closed under Section 73(3) of the Finance Act, 1994.

3. The ld. AR submitted that the appellant neither took registration nor promptly paid the service tax. It is only after the enquiry conducted by the Revenue the tax liability was discharged.

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

5. The admitted facts are that the appellant paid full service tax liability along with applicable interest before the proceedings were

initiated by way of issue of show cause notice. The only reason for not closing the case under Section 73(3) is, apparently, the involvement of period which is beyond the normal limitation. Considering the tax entry for liability under construction service itself has been a subject matter of substantial dispute in various higher appellate forum, we note that penalty imposed in this case can be waived by invoking provisions of Section 80 of the Finance Act, 1994. Accordingly, while upholding the tax liability of the appellant, the impugned order is set aside only to the effect of penalties which are waived in terms of Section 80 of the Act. The Appeal is partly allowed to that extent only.

(Dictated & pronounced in open Court)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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