IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –III

Service Tax Appeal No.ST/51521/2017 [SM]

[Arising out of Order-in-Appeal No.DDN/EXCUS/000/APPL-I/38/2017-18 dated 28.04.2017 passed by the Commissioner (Appeals), Central Excise, Meerut]

M/s.Bindlas Beacon Engineer ...Appellant

Vs.

C.C.E. & S.T., Meerut ... Respondent

Present for the Appellant : Ms.Rashi Surekha, Advocate & Mr. Anubhav Jain, Advocate
Present for the Respondent: Ms. Neha Garg, D.R.

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

Date of Hearing/Decision: 16/10/2017

FINAL ORDER NO. 57339/2017

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 28.04.2017 passed by the Commissioner (Appeals), Central Excise, Meerut.

2. The appellant is not contesting the Service Tax demand alongwith interest confirmed against it in the adjudication order. However, the appellants' grievance is that the proviso to Section 78 of the Finance Act, 1994 cannot be invoked for imposition of penalty inasmuch as, non-payment of the service tax amount during the stipulated time was not due to fraud,

collusion, suppression of facts etc. on the part of the appellant in defrauding Government revenue.

3. Heard both sides and examined the records.

4. I find that there were some calculation error with regard to computation of the Service Tax liability by the appellant and as determined by the Audit Wing of the Service Tax Department. Since the quantification of the Service Tax liability was amicably settled between the appellant and the Department and the amount of appropriate tax was deposited by the appellant and appropriated towards Service Tax liability by the adjudicating authority, I am of the view that the charges of fraud, collusion, suppression etc. cannot be levelled against the appellant, justifying imposition of penalty under Section 78 ibid.

5. Therefore, the impugned order is set aside and the appeal is allowed to the extent of imposition of penalty under Section 78 ibid.

[Dictated and pronounced in the Open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita