IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –IV

Service Tax Appeal No.ST/2569/2012-CU [DB]

[Arising out of Order-in-Original No. COMMISSIONER/RPR/81/2008 dated 25.09.2008 passed by the Commissioner of Central Excise, Chattisgarh]

Sainik Mining and Allied Services Ltd. ...Appellant

Vs.

C.C.E., Chattisgarh ... Respondent

Present for the Appellant : Mr.S.K. Pahwa, Advocate
Mr. Rohan Pahwa, Advocate &
Mr.Kuldeep Singh, Advocate
Present for the Respondent: Mr.Sanjay Jain, D.R.

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

Date of Hearing / Decision : 27/10/2017

FINAL ORDER NO. 57540/2017

PER: B.RAVICHANDRAN

The appeal is against order dated 25.09.2008 of Commissioner of Central Excise, Raipur. The appellants are engaged in various activities in pursuance of an agreement with South Eastern Call Fields Ltd. The main activities are excavation, loading, transport, dumping, spreading and dozing of over burden Removal at Barud Open Cast Mine Expansion

Project of Raigarh Area belonging to the client. After conducting certain enquiry, proceedings were initiated against the appellant for non-payment of Service Tax under the category of Site Formation and Clearance, Excavation and Earth Moving and Demolition service in terms of Section 65 (97a) of the Finance Act, 1994. The original authority adjudicated the case and confirmed the Service Tax liability of Rs.1,05,63,759/- against the appellant and imposed penalty of equivalent amount under Section 78 and further penalty of Rs.1,000/- under Section 77 of the Finance Act, 1994.

2. The ld. Counsel for the appellant submitted that as soon as the enquiry started by the officers, the appellants contacted the client to ascertain the tax liability. Further, they have taken a centralized registration with service tax, New Delhi and followed the procedure thereafter. Since, the Service Tax liability is sought to be collected from the appellant, they had consultation with the client and received Service Tax amount of Rs.1,07,86,707/- and paid the same to the Government. They are not contesting the tax liability in the present case. The only plea is that as soon as they realized the taxability of their service, they have contacted the client and followed up matter and finally discharged the Service Tax. This aspect can be verified from their records. They had pleaded for waiver of penalty under Section 78, as there is reasonable cause for non-payment of Service Tax. While not contesting the liability for

tax, appellant only pleaded bonafide reason for non-payment of tax, as the same is to be collected from the client and discharged to the Government, which they had done subsequently.

3. The ld. A.R. supported the findings in the impugned order and submitted that these details were not made available to the original authority for a finding.

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

5. The appellants are claiming that they have discharged Service Tax. This requires verification. They have also pleaded that they could not present their case before the original authority, as by the time they have got Central Excise Registration and did not get the due intimation of the proceedings before the lower authorities. Considering that the liability is not contested on merit, we direct the original authority to verify the payment details alongwith liability as raised in the demand proceedings to confirm the full discharge of liability alongwith interest, if any, applicable to the present case.

6. Regarding imposition of penalty, we have considered the submission of the appellant. Admittedly, they have undertaken

these activities in terms of agreement with the Public Sector Undertaking M/s. South Eastern Coal Fields Ltd. When the dispute regarding the Service Tax liability was raised, it would appear that they had consulted their clients for reimbursement to pay the tax, which was remitted to the Government on receipt from the client. In such situation, we are of the opinion that there is a reasonable cause for non-payment of tax, in time. Accordingly, while upholding the tax liability on merit, we find it is a fit case for waiver of penalty under Section 80. The original authority may verify and confirm full discharge of tax liability with interest as applicable for the relevant period. The appeal is accordingly, allowed in the above terms.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita