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

Date of Hearing/Order: 1.11.2017

Appeal No. ST/55956/2013-SM

(Arising out of Order-in-Original No. 48/2012/ST/JPR-2012 dated 27.11.2012 passed by the Commissioner of Central Excise, Jaipur)

M/s Shree Mohangarh Construction Co. — Appellant

Vs.

CCE & ST, Jaipur-II — Respondent

Appearance

Shri O.P. Agarwal, C.A. - for the appellant

Shri G.R. Singh, D.R. - for the respondent

CORAM: **Hon'ble Mr. M.V. Ravindran, Member (Judicial)**

Final Order No. 57561/2017

Per M.V. Ravindran :

This appeal is directed against Order-in-Original No. 48/2012 dated 27.11.2012.

2. Heard both sides and perused the records.

3. Ld. CA submits that this appeal is directed against the findings recorded by the adjudicating authority in respect of Show Cause No. V(ST)Adj./JPR-II/121/2011/867 dated 21.10.2011. He brings to my notice that the entire amount of the service tax liability along with interest were deposited by the appellant before the issuance of show

cause notice. He submits that this adjudication order has confirmed demands and the interest thereof and appropriated the amount and imposed penalty under Section 76 of the Finance Act, 1994. It is his submission that subsequently, they filed a refund claim on the amount deposited in excess then the due as per the show cause notice and the said refund claim reproduces the entire chronology of the event and has sanctioned the refund of excess amount deposited by them by an adjudication order No. 02/2014-R(ST) dated 12.2.2014.

4. After hearing both sides and on perusal of records, I find that there is no dispute of the entire amount of the tax liability and the interest thereof as demanded under Show Cause Notice dated 21.10.2011, stands deposited before the issuance of show cause notice. In my view, the adjudicating authority should have considered the same and should not have imposed any penalty under Section 76 as is provided under the law. Provisions of Section 73 (3) of the Finance Act, clearly enshrine that there is no need to issue show cause notice on discharge of the tax liability and the interest thereof before the issuance of show cause notice. This is the law which has been settled by the Hon'ble High Court of Karnataka in the case ***CCE & ST Vs. M/s Adecco Flexione Workforce Solutions Ltd.*** – 2011-TIOL-635-HC-KAR-ST.

5. In view of the foregoing, the appeal which contests the imposition of penalty under Section 76 is allowed and the impugned order stands modified to that extent in respect of show cause notice dated 21.10.2011.

6. The appeal is disposed of as indicated above.

(Dictated & pronounced in open Court)

(M.V. Ravindran)
Member (Judicial)

RM