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

Date of Hearing/Order: 9.11.2017

Appeal No. ST/1059/2010, ST/1274/2010 & ST/159/2011-SM

(Arising out of Order-in-Appeal No. 190(VC)ST/JPR-I/2013 dated 31.10.2013, 218(DKV)ST/JPR-I/2010 dated 8.6.2010 and 370(DKV)ST/JPR-I/2010 dated 4.11.2010 passed by Commissioner (Appeals), Customs & Central Excise, Jaipur)

M/s Abdul Latif Cable Network Appellant
M/s Baran Cable Network
M/s Padam Chopra Cable Network

Vs.

CCE, Jaipur Respondent

<u>Appearance</u>

Shri Abhishek Jaju, Advocate - for the appellant

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

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

Final Order No. 57841-57843/2017

Per Justice Dr. Satish Chandra:

The present appeals have been filed against the Order-in-Appeal No. 190/2010 dated 31.10.2010; 218/2010 dated 8.6.2010 and 370/2010 dated 4.11.2010. The period of dispute is 2002-2006.

2. In all the three appeals, the facts and circumstances and disputes are identical hence all the appeals are disposed of with this consolidated order for the sake of convenience.

3. The brief facts of the case are that the appellants had purchased the fixed number of connections from the principal service provider for providing the services as cable operator. During the period under consideration, the appellant has not paid any service tax. After receiving the notice from the department, the appellants have paid the service tax. The department has levied the penalty after issuance of the show cause notice. Being aggrieved, the appellant has filed the present appeals.

4. With this background, heard Shri Abhishek Jaju and Shri G.R. Singh, ld. Counsels for the parties.

5. After bearing both the parties and on perusal of record, it appears that the service tax is applicable in the instant cases, which has already been paid. Valuation issue is also correctly determined by the department. However, regarding the penalty, the issue has come up before the Tribunal in the same set of facts in the case of ***Krishna Satellite Cable Network Vs. CCE, Jaipur -*** 2008 (12) STR 605 (Tri.-Del.), where it was observed that :

> "**6.** In respect of the penalties, we find that appellants were not receiving signals directly from the satellite as they are getting the signals from multi-system operator who is receiving signals from the satellite, therefore, we find merit in their contention that they were under the *bona fide* belief, that appellant are not liable for service tax. Section 80 of the Finance Act provides that notwithstanding anything contained in the provisions of Section 76 [Section 77 or Section 78], no penalty shall be imposable on the assessee for any failure referred to in the said provisions if the assessee proves that there was reasonable cause for the said failure. In view of the reasons explained by the appellant, we find the appellants are covered under the exception provided under Section 80 of the Finance Act, therefore, penalties imposed on the appellant are set aside. The appeal is disposed of as indicated above.

6. By following our earlier decision (supra), I cancelled the levy of penalty remaining impugned order pertaining to the duty and valuation are hereby upheld.

7. In the result, appeal filed by the appellant is partly allowed.

(Dictated & pronounced in open Court)

(Justice Dr. Satish Chandra)
President

RM