IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:11.12.2017

Service Tax Appeal No.2300/2012
ST/Cross/ 3345/2012

[Arising out of Order-in-Appeal No.86/RPR-I/2012 dated 18.05.2012 passed by the Commissioner (Appeals-I), Central Excise, Raipur (C.G.)]

CCE, Raipur Appellant

Vs.

M/s.Navbharat Explosives Co.Ltd. Respondent

Service Tax Appeal No.2572/2012(DB)

M/s.Navbharat Explosives Co.Ltd. Appellant

Vs.

CCE, Raipur Respondent

Appearance:

Rep. by none for the appellant.
Rep. by Ms. Neha Garg, AR for the respondent.

Coram: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Orders Nos.58593-58594/2017

Per B. Ravichandran:

When the case was called, none appeared on behalf of the assessee/appellant, who filed appeal against the impugned order and also a cross objection against the appeal by Revenue. We note that these appeals have been listed on numerous occasions and on none of the occasions, the appellant /assessee made appearance to defend their case. Since adequate opportunities have already been provided, with due notice on various occasions, these appeals are taken up for disposal, taking assistance from the ld. AR and on perusal of the appeal records.

2. The appellant are engaged in the manufacture of slurry explosives and detonating fuse liable to central excise duty. They were registered with department for the payment of service tax under the category of “Goods Transport Agency”. During the period Jan. 2005 to September, 2008, the appellants received such transport services . Proceedings were initiated against the appellant/assessee for non-payment of service tax and for imposing penalties. The Original Authority vide his order dated 11.10.2011 confirmed service tax liability of Rs.2,83,722/- . He also imposed penalty under Section 76, 77 and 78 of the Finance Act, 1994. On appeal, vide the impugned order, the Commissioner (Appeals) set aside the penalty under Section 76. While upholding the tax liability of the appellant/assessee, the Commissioner (Appeals) held that the appellant/assessee did not deposit 25% of the penalty amount under Section 78 within 30 days and as such, facility of reduced penalty is not available to them.

3. The assessee/appellant is aggrieved by non-availability of facility of reduced penalty under Section 78 by the impugned order. The Revenue is aggrieved for non-imposition of penalty under Section 76.

4. We have heard the ld.AR and perused the appeal records.

5. On the first point, regarding the prayer of the appellant/assessee for reduced penalty, we note that the provisions of Section 78 are very clear and unambiguous. For availing reduced penalty of 25%, the assessee has to deposit the adjudged tax with applicable interest along with 25% of the penalty imposed under Section 78, within 30 days of the receipt of adjudication order. Admittedly, in the present case, the time limit of 30 days has not been followed by the appellant/assessee. There is

no provision to extend such time limit. This has been categorically held by the Hon'ble Delhi High Court in the case of **Principal Commissioner of Service Vs. Tops Security Ltd. vide judgement dated 5.12.2015 in CEAC 42/2015.**

6. Regarding the appeal by Revenue for non-imposition of penalty under Section 76, when penalty has already been imposed under Section 78, we hold that prior to amendment in Section 78 w.e.f. 10.05.2008, there is no bar in imposing penalty under both the sections. This has been clarified by the Hon'ble Delhi High Court in the case of **Bajaj Travels Ltd. judgement dated 3.8.2011 in CEAC 6/2009** and also by Karala High Court in the case of **Asstt. Commissioner Vs. Krishna Poduval - (2005) 199 CTR Ker 581, 2005 (4) KLT 947.** Following the above said ratio, we hold that prior to amendment to Section 78, there is no bar in imposing penalties under both sections 76 and 78 of Finance Act, 1994. Accordingly, while upholding the finding of the Commissioner (Appeals) regarding non-availability of the reduced penalty under Section 78 to the appellant /assessee, we set aside the impugned order with reference to penalty under Section 76. The said penalty is rightly imposable for the period prior to 10.05.2008.

7. In view of the above discussions, the appeal by Revenue is allowed and the appeal by the appellant /assessee is dismissed. Cross objection by appellant/assesse is also stands disposed of.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.