CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 03.01.2018

Appeal No. ST/608/2012- [DB]
ST/CROSS/3186/2012

[Arising out of the Order-in-Original No. 56/GB/2011 dated 22/12/2012 passed by the Commissioner, Service Tax Commissionerate, New Delhi.]

CST, Delhi … Appellant

Vs.

Jaiprakash Associates Ltd …Respondent

Appearance:
Present Shri Amresh Jain, DR for the appellant
Present Shri Narendra Singhvi, Advocate for the respondent

Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

FINAL ORDER No. 50039/2018

Per B.Ravichandran

1. The Revenue is in appeal against order dated 22/12/2011 of Commissioner of Service Tax, New Delhi. The respondent also filed the cross objection. The respondent is engaged in construction services and also in manufacture of cement etc. Proceedings were initiated against the respondent to demand and recover Service Tax under two categories namely, Banking and other Financial Services (BoFS) and Consulting Engineering Services for the period 18/04/2006 to 31/03/2009. These tax liabilities were sought to be confirmed on reverse charge basis in terms of Section 66A of the Finance Act, 1994. The Original Authority confirmed the tax liability. However, he did not impose penalties on the tax liability on banking service. He impose penalty equivalent to tax liability under Consulting Engineering Service.

2. The Ld. AR elaborating the grounds of appeal by the Revenue submitted that the Original Authority should have imposed penalty

under Section 78 for tax liability under banking services also, since he has given a clear finding regarding the existence of the ingredients for invoking extended period of demand. It is the case of the revenue that when the penalty was imposed for one of the services and in the face of clear finding regarding suppression etc, the penalty should have been imposed on the other service also.

3. The Ld. Counsel for the respondent contesting the appeal by the Revenue submitted that the whole demand is on reverse charge basis. The issue was contentious and litigated in various forums. Finally, the Hon'ble Bombay High Court in the ***Indian National Shipowners Association 2009 (13) STR 235 (Bombay)*** held that Service Tax liability will arise on import of service only with effect from 18/04/2006 after the introduction of Section 66A in the Finance Act, 1994. The matter was further affirmed by the Hon'ble Supreme Court 2010 (17) STR J 57 (SC). The Board issued circular accepting above decisions on 26/09/2011. In the facts of these developments, it is clear that there can be no malafide attributable to the respondent on tax liability on reverse charge basis. Even otherwise when the matter was pointed out to them by the Revenue they have discharged the full Service Tax liability on both the services. In such situation, the correct course of action would have been to close the matter in terms of Section 73 (3) without further proceedings. Instead the revenue proceeded to initiate action and it imposed penalty on one of the services. In the cross appeal, the respondent raised the issues regarding this penalty and also limitation.

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

5. Admittedly, the tax liability on the respondent is on reverse charge basis. It is a fact that the interpretation of applicability of reverse charge as per the Service Tax Rules, 1994 and thereafter Section 66A of the Act was subject matter of substantial litigation. Finally, the matter was resolved by Hon'ble Bombay High Court in the Indian National Shipowners Association (supra) which was affirmed by the Apex Court and clarified later in confirmation by the Board in September, 2011. In view of such development it will not be sustainable to allege malafiede on the part of the assessee in order not to pay tax on such reverse charge mechanism. Since in the present case full tax amount stands discharged we note that the circumstances of imposing penalty is not justifiable. This is a fit case for invoking provisions of Section 80 for waiver of penalty on reasonable cost for non-payment of tax. The Ld. Counsel for respondent during his submission only contested penalty.

6. Accordingly, we find no merit in the appeal filed by the Revenue and hold that the penalty imposed on consulting engineering service can be waived under Section 80. To that extent the cross objection filed by the respondent is allowed.

7. The appeal and CO are disposed of in above terms.

[Order dictated and pronounced in the open court]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Rekha