IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Service Tax Appeal No. 1913-1915 of 2012

[Arising out of the Order-in-Appeal No. IND-I/ CEX/000/APP/ 409-412 /2011 dated 17.10.2011 passed by Commissioner of Customs & Central Excise, Indore.]

M/s. Neptune **Appellant**
Shri D K Solution
Shri Modern Services

Vs.

Commissioner of Central Excise **Respondent**
Indore

Appearance:
Shri S K Pahwa, Advocate for the Appellants
Shri P Juneja , DR for the Respondent

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

Date of Hearing/ Decision: 28.12. 2017

FINAL ORDER No. 58713 -58715 /2017

Per: B Ravichandaran:

All three appeals are on common disputed issue regarding the liability to penalty under section 76 and 77. Learned Counsel appearing for the appellant submitted that they are small time contractor doing work for M/s. Bharati Airtel. Since they could not get the full clarity on the issue and also no service tax was collected from the Bharti Airtel, they did not discharge Service Tax during material time. However, the same has been discharged later. The impugned order records that there is no malafide on the part of the appellants in not discharging service tax. Infact on that basis penalty under section 78 was set aside by the Commissioner (Appeals). However, he upheld the penalties under section 76 and 77. Learned Counsel prays that by invoking section 80, they may be given waiver of penalty levied in all sections.

2. He submitted that in respect of two appellants, M/s. Neptune and M/s. D K Solutions, there is an incidental issue of short payment of service tax which arose because of calculation difference between amount billed and amount received by the appellants. He submits that they have paid tax on amount received. The demand is confirmed on the amount billed.

3. We have heard Shri S K Pahwa and Shri P Juneja, learned representatives of the parties and and perused the appeal record.

4. On the first issue regarding imposition of penalty under section 76 and 77, we have noted the finding recorded in the impugned order. It has been categorically recorded that there is no malafide attributable to the appellant for non-payment of service tax. In view of such finding, we note that there is reasonable cause for non-payment of tax which will fulfill the requirement of section 80 for waiver of penalties. Accordingly, the penalties imposed on the appellant are waived.

5. On the second issue regarding differential service tax, we direct the original authority to examine evidence submitted by the appellants and to satisfy that they did discharge the service tax on all the receipts and difference is between billed amount and received amount.

6. With the above observations, the impugned orders are set aside and appeals are allowed.

(Dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra)
President

(B Ravichandaran)
Member(Technical)

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