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

**COURT-I**

**Date of hearing/decision: 05.01.2018**

**Appeal No. ST/57926/2013- [DB]**
[Arising out of the Order-in-Original No. 1/ST/CB/CCE/ADJ/2013 Dated 26/02/2013 passed by the Commissioner (Adjudication), of Central Excise- New Delhi]

Skylark Securities Pvt. Ltd. … Appellant

Vs.

CCE, Delhi …Respondent

Appearance:
Present Shri A.K. Batra, CA for the appellant
Present Shri Ranjan Khanna, AR for the respondent

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

**FINAL ORDER No. 50075/2018**

## Per B.Ravichandran

1. The Ld. Consultant appearing for the appellant at the outset submitted that tax liability under Security Agency Service and Business Auxiliary Service is not contested. The full tax liability along with applicable interest has been discharged before the adjudication of the case. In fact with reference to differential demand of Security Agency Service full tax liability of Rs. 73.73 Lakhs have been paid even before the issue of show cause notice. The Ld. Consultant submitted that the case could have been closed under Section 73 (3) of the Finance Act 1994. In respect of BAS the full amount with interest was paid within 60 days of issue of notice but before adjudication of the case. The only prayer in the present appeal is against the penalties imposed on these tax liability on the ground that for Security Agency Service the differential value/ service tax is only on account of the difference between the gross amount and the commission amount. The appellant entertained a bonafiede belief that Service Tax liability will be on the

income as commission accruing to them and not on the salary and other benefits paid to the security guards deployed by them. On the second issue it is submitted that the appellant was taxed under BAS with reference to toll amount collected from motor vehicles using the road. They entertained a bonafide belief that such toll collection in terms of agreement through a main contractor ultimately with Noida Authorities, will not be liable to tax. There is a bonfide belief that for road usage no Service Tax liability may arise. On this premise the Ld. Consultant prayed for waiver of penalty invoking Section 80.

2. The Ld. AR opposed the plea on the ground that the appellant is not even registered with the department under BAS and they are not filing ST-3 return containing details of full gross consideration.

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

4. On careful consideration of the submissions made by the appellants we are of the considered view there is a reasonable cause for non-payment on Service Tax during the material time due to the reasons pleaded by the appellant. Accordingly, while we are upholding Service Tax liability, which has been paid with interest applicable, we waive the penalties imposed, invoking the provisions of Section 80. Accordingly, the prayer of the appellant is accepted.

5. In the result, impugned order is modified and appeal is partly allowed.

[Order dictated and pronounced in the open court]

**(Justice Dr. Satish Chandra)**
**President**

**(B. Ravichandran)**
**Member (Technical)**

Rekha