CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No.ST/1228/2011-ST [DB] &

[Arising out of Order-in-Original No.16/RDN/2011 dated 05.05.2011 passed by the Commissioner of Service Tax, Delhi]

Service Tax Appeal No.ST/52773/2014-ST [DB]

[Arising out of Order-in-Original No.17/ST/SRB/2014 dated 11.02.2014 passed by the Commissioner of Service Tax, Delhi]

M/s.Prasar Bharati …Appellant

Vs.

C.S.T., Delhi … Respondent

Present for the Appellant : Mr. Rajeev Sharma, Advocate
Present for the Respondent: Mr. Sanjay Jain, D.R.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. V.PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 05.03.2018

FINAL ORDER NO. 51043-51044/2018

PER: S.K. MOHANTY

The issue involved in both the appeals is identical and accordingly, the same are taken up for hearing together and a common order is being passed.

2. Brief facts of the case are that the appellant is a Corporation, established under the Prasar Bharati Act, 1990.

During the disputed period, the appellant had provided the taxable services falling under the category of "Broadcasting Service", "Advertising Space or Time Service and Consulting Engineer Service", as defined under the Finance Act, 1994. While scrutinizing the records of the appellant, it was observed by the Audit Wing of the Service Tax Department that the appellant did not pay the Service Tax for the above taxable services provided by it. The difference in the duty liability was discharged by the appellant subsequently. However, in the adjudication order, the Department has confirmed the entire Service Tax liability alongwith interest and also imposed penalty on the appellant.

3. The ld. Advocate appearing for the appellant fairly concedes that the appellant is liable to pay Service Tax for the taxable services provided by it. However, he submitted that the cum-tax benefit has not been extended by the original authority. With regard to imposition of penalties, the ld. Advocate submits that the appellant is a statutory body and malafides cannot be attributed for imposition of the penalty. Further, he also pleads for the benefit of Section 80 of the Act, for non-imposition of penalty under Section 77 & 78 of the Act.

4. On the other hand, the ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the case records.

6. Since the appellant concedes that it had already deposited the Serviced Tax alongwith interest for providing the taxable services, we are not considering the merits of the case as to whether service tax is payable by the appellant or not. However, we find that the Cum-tax benefit has not been extended to the appellant in this case, to which it is legally entitled to. Therefore, we are of the view that the matter should go back to the original authority for a limited purpose of re-quantification of the service tax liability. Therefore, we remand the matter to the original authority for re-quantification of the actual Service Tax liability, which is payable by the appellant.

7. Since there is reasonable cause for non-payment of Service Tax within the stipulated time frame, we are of the view that the provisions of Section 80 of the Act can be invoked for non-imposition of penalties under Section 77 & 78 of the Act. Therefore, we set aside the penalty imposed in the impugned order under Section 77 & 78.

8. The appeals are disposed of in above terms.

[Dictated and pronounced in the open Court)

(V.PADMANABHAN)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Anita