IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 23.4.2018

Appeal No. ST/57186/2013-SM

(Arising out of Order-in-Appeal No. 273(RDN)ST/JPR-I/2012 dated 31.12.2012 passed by the Commissioner of Central Excise (Appeals), Jaipur)

M/s ETSC Computers Pvt. Ltd. Appellant

Vs.

CCE, Jaipur Respondent

Appearance

Ms. Rinky Arora, Advocate - for the appellant

Shri K. Poddar, D.R. - for the respondent

CORAM: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Final Order No. 51582/2018

Per Ms. Archana Wadhwa:

The challenge in the present appeal is only to penalties of Rs. 48,598/- imposed under each of the Sections 76 and 78 of the Finance Act, 1944

2. The appellants are engaged in providing manpower recruitment agencies to M/s Wipro Info Tech with effect from 16.6.2005. The said services were made taxable with effect from the said date and the appellant took registration with effect from 9.9.2005 and started paying the service tax. However, the demand in the present appeal relates to the period 16.6.2005 to 9.9.2005 to the

extent of Rs. 48,598/-, which the appellant deposited along with interest.

3. In above scenario, they pray for setting aside the penalty on the ground that during the relevant period the definition of the services underwent change two times and the law was not clear. Accordingly, they request for invocation of the provisions of Section 80 of the Act and set aside the penalties. For the above proposition, they rely upon the Tribunal's decision in the case of ***Jashbhai M. Parmar Vs. CCE, Vadodara-I*** – 2013 (30) STR 444 (Tri.-Ahmd.),

4. After hearing the ld. DR, I note that the Tribunal in the above referred decision has considered the fact that the definition of manpower recruitment services had undergone change twice, after its introduction in the statute on 16.6.2005 and by appreciating that the entire tax was deposited along with interest, the Tribunal set aside the penalty imposed upon the appellant. By following the said case, and by appreciating that there is no positive evidence brought on record by the Revenue showing any mala fide on the part of the appellant, I also, while confirming the demand and interest, as not challenged, set aside the penalty imposed upon the appellant under both the sections.

5. Appeal is disposed of in above manner.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

RM