IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

BENCH-DB

COURT –II

Service Tax Appeal No. ST/55497/2014-[DB]

[Arising out of Order-in-Appeal No. 98-ST-RPR-I-2014 dated 25/06/2014 passed by the Commissioner (Appeals), Central Excise & Service Tax, Raipur]

M/s Lalganga Builders Pvt. Ltd. ...Appellant

Vs.

C.C.E. & ST, Raipur ... Respondent

Present for the Appellant : Mr. Jatin Mahajan, Advocate
Present for the Respondent: Mr. A.K. Singh, D.R.

Coram: HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)
HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

Date of Hearing/ Decision 19.06.2018

FINAL ORDER NO. 52480/2018

PER: RACHNA GUPTA

The appellant has filed the present Appeal being aggrieved of the Order of Commissioner (Appeals) bearing No. 2490 dated 25.06.2014.

2. The facts relevant for the purpose are that the appellant is engaged in rendering taxable services of commercial and industrial construction service and are registered for the same.

Consequent of inquiry conducted against the appellant, it was noticed that the appellant has rented out their immovable property to various offices/ departments for commercial use under rental agreements accordingly appeared to have rendered services classifiable under the category of 'Renting of Immovable Property', as defined under Section 65 (90a) of Finance Act, 1994 (the Act in short). The said service is made taxable w.e.f. 01.06.2007. However, the appellant has not rendered the service tax liability for the amount of rent being received by him. Resultantly, a Show Cause Notice dated 11.10.2012 was served upon him. The same was adjudicated vide the Order of Additional Commissioner dated 26.03.2014 thereby confirming the demand of service tax alongwith the interest of the same amount. Penalty, in addition, was imposed as mentioned in the said Order. The appellant challenged the said Order before the Commissioner (Appeals) who has confirmed the Order of the original Adjudicating Authority and hence the present Appeal.

3. We have heard Shri Jatin Mahajan, Advocate for the appellant and Shri A.K. Singh, Ld. DR for the Department.

4. The appellant has conceded about his liability qua rendering 'Renting of Immovable Property Services' however has submitted that since the services came into tax net w.e.f. 01.06.2007 only, the appellant who was originally registered

for rendering 'Commercial and Industrial Construction Services' was not aware of the liability as being newly introduced that too with retrospective effect. Accordingly, the Order confirming the deposition alongwith the interest and the imposition of penalty is prayed to be set aside.

5. While rebutting these arguments, Ld. DR has justified the Order of the Appellate Authority impressing upon that the tax for 'Renting of Immovable Services' was made leviable retrospectively. The authorities below have rightly imposed the interest as well as the penalties. Appeal is prayed to be rejected.

6. After hearing both the Counsels, we are of the considered opinion as follows:-

(a) Since the appellant himself has conceded about his liability, we opine that no adjudication qua the same at all is required. From the documents on record, it is apparent that the moment the liability of the appellant under Section 65 (90a) was brought to his notice, the appellant, despite his tenants did not cooperate and denied to pay the service tax on the rent, paid the sum of Rs. 6,41,984/- on 18.10.2012 for the period 01.06.2007 to 31.03.2012, i.e. before the impugned Show Cause Notice was received by the appellant (which was received on 19.10.2012). This particular fact makes it clear that there is no contumacious conduct for deliberate violation of the provisions of service tax laws on part of the appellant as has rightly been held by the Commissioner (Appeals) as well. But interest as per Section 75 of the Act is liable to be paid since service tax has been paid with delay. We are of the firm opinion that the appellant cannot be relieved from the burden of paying the interest as directed by the Adjudicating Authority below.

(b) Now coming to the plea of imposition of penalty, the Hon'ble Supreme Court in the case of **P.K. Hospitality Service Pvt. Ltd. vs Union of India 2012 (26) STR J 142 (S.C.)** has stayed the collection of service tax on the rental arrangement service till 31.09.2011 however, had clarified that there is no stay of imposition of service tax under Sub-Clause zzzz of Section 65(105) read with Section 66 of the Act in so far as the future liability towards service tax w.e.f. 01.10.2011 is concerned. This decision came in the light of the amendment in the provision vide the enactment of Finance Act, 2010 of 08.05.2010. The period of demand in the present case is well covered under the said decision. Accordingly, we are of the opinion that the Adjudicating Authority below has rightly given the benefit/immunity under Section 80 of the Act while waiving the penalties. Accordingly, we hereby uphold the findings in Order under challenge, to the said effect.

7. As a result of entire above discussion, the Appeal is partly allowed however directing Commissioner Adjudication to requantify the demand in terms of the above observation.

[Operative part pronounced in the open court]

(RACHNA GUPTA)	**(V. PADMANABHAN)**
MEMBER (JUDICIAL)	**MEMBER (TECHNICAL)**

D.J.