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

Date of Hearing/Order: 5.2.2019

Appeal No. ST/2158/2012-SM

(Arising out of Order-in-Appeal No. 62(AK)ST/JPR-I/2012 dated 10.4.2012 passed by the Commissioner (Appeals), Central Excise, Jaipur)

M/s N.K. Buildcon Pvt. Ltd. Appellant

Vs.

CCE, Jaipur Respondent

Appearance

Ms. P. Goel, Advocate - for the appellant

Shri P.R. Gupta, DR - for the respondent

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

Final Order No. 50175/2019

Per Ms. Archana Wadhwa:

The challenge in the present appeal is only to imposition of penalty of Rs. 1,31,459/- under Section 76 of the Finance Act, 1994.

2. As per the facts on record, the demand for the identical amount was confirmed against the appellant in respect of consulting engineering services. Along with confirming of demand the original adjudicating authority also imposed equal penalties in terms of Section 76, 77 and 78. Within 30 days from the issuing of the said

order, the appellant deposited the entire service tax along with interest and 25% of penalty imposed under Section 78 of the Act.

3. The said order was challenged by the appellant before Commissioner (Appeals). The appellate authority observed that inasmuch as there was no proposal in the Show Cause Notice to impose penalties under Sections 77 and 78, the imposition of penalties by the adjudicating authority was not justified. He accordingly, set aside the penalties, but upheld the penalty imposed under Section 76, as was the proposal in the Show Cause Notice.

4. The contention of the ld. Advocate appearing for the appellant is that there was no mala fide on the part of the assessee in not depositing the service tax and the same was not being deposited under a bona fide belief that it was not required to be deposited as during the relevant period there was confusion in the field. However, she submits that 25% of the penalty, imposed under Section 78, which has already been set aside by Commissioner (Appeals) stands deposited and as such the same may be considered for the purposes of Section 76.

5. Ld. DR appearing for the Revenue reiterates the findings of the authorities below and submits that the appellants are not disputing the confirmation of demand and the very fact that they have

deposited the same itself strengthens the Revenue's case that the same was payable. There is nothing on record to show reflection of any bona fide on the part of the appellant. As such, he prays for upholding the said penalty.

6. Appreciating the entire facts on record, I find that in terms of the provisions of Finance Act, if an assessee deposits the entire dues along with interest and 25% of the penalty, the penalty imposed under Section 78 is required to be reduced to 25%. However, in the present case, the appellant had already deposited 25%, though under Section 78, which penalty stands set aside by Commissioner (Appeals). As such I deem it fit to reduce the penalty imposed under Section 76 to 25% of the same, which already stands deposited by the appellants. The balance penalty is set aside.

7. Appeal is disposed of in above terms.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

RM