IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

EASTERN ZONAL BENCH: KOLKATA

Appeal No.ST/76768/2017

(Arising out of Order-in-Appeal No.161/ST/HAL/2017 dated 14.06.2017 passed by the Commissioner of Central Excise (Appeal-I), Kolkata)

Shree Shyam Silicate Udyog

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise & Service Tax, Haldia

Respondent (s)

Appearance:

Shri A.K.Das, Advocate for the Appellant (s)
Shri A.Roy, Suptd.(A.R.) for the Respondent (s)

CORAM:

Hon'ble Shri P.K.Choudhary, Member (Judicial)

Date of Hearing/Decision:- 20.02.2018

ORDER NO. FO/75788/2018

Per Shri P.K.Choudhary

Briefly stated the facts of the case are that the appellant is a Proprietorship Concern engaged in the manufacture of Liquid Sodium Silicate. There was a dispute on payment of Service Tax on GTA Service under Reverse Charge Mechanism. The appellant paid the service tax on GTA service in order to avoid litigation. The Adjudicating authority confirmed the demand of Service Tax of Rs. 1,55,117.00 along with interest and imposed penalties under Section 77 and Section 78 of the Finance Act, 1944. By the impugned Order the Commissioner (Appeals) upheld the Order.

2. Heard both sides and perused the appeal records.

3. The Learned Counsel submits that they have already paid the entire amount of Service Tax and they are not contesting the same anymore. They have filed the appeal against the imposition of penalty of equal amount of Service Tax.

4. I find that the appellant disputed the demand of tax as they are not "Factory" within the definition of the Factories Act. In addition, it is stated that they are not liable to pay Service Tax as they are a Proprietorship concern. But they have already paid the tax which they are not disputing. Therefore, there is no need to go into the merits of the case. In any event, the appellant paid the tax prior to issuance of Show Cause Notice. There is no material available on record to invoke Section 78 of the Act, 1994. Hence, the imposition of penalty under Section 78 is not justified. Accordingly it is set aside. The appeal filed by the appellant is allowed.

(Operative Portion of the Order already pronounced in the open court)

S/d.
(P.K.Choudhary)
MEMBER (JUDICIAL)

Ss