IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

SP-583/08 &
S.T.Appeal No.156/08

(Arising out of Order-in-Original No.01/Revision/Commr//ST/Kol/2008-2009 dated 12.06.2008 passed by the Commissioner of Service Tax, Kolkata)

M/s D. S. Marine

Applicant (s)/Appellant (s)

Vs.

Commr. of Service Tax, Kolkata

Respondent (s)

Appearance:

Shri S. P. Siddhanta, Consultant for the Appellant (s0
Shri A. K. Biswas, Supdt. (A.R.) for the Revenue(s)

CORAM:
HON'BLE SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI V. PADMANABHAN, TECHNICAL MEMBER

Date of Hearing : 03.05.2018
Date of Decision : 03.05.2018

ORDER NO - **FO/ST/A/75915/2018**

Per Dr. Satish Chandra.

The present appeal is filed by the appellant against the impugned Order-in-Original No.01/Revision/Commr//ST/Kol/2008-2009 dated 12.06.2008 passed by the Commissioner of Service Tax, Kolkata.

2. The Joint Commissioner has confirmed the demand of service tax, but has not imposed any penalty for the reason that the service tax along with interest was paid before issuance of show-cause notice. Further, by Revisional Order-in-Original impugned, the Commissioner has levied the penalty of Rs.14,61,195/-. Further, an amount of

Rs.14,75,451/- was again appropriated, which was paid in excess. Being aggrieved, the appellant has filed the present appeal.

3. With this background, we have heard Shri S. P. Siddanta, ld.Counsel for the appellant and Shri A. K. Biswas, ld.A.r. for the Revenue.

4. After hearing both sides and on perusal of record, it appears that the tax has been paid along with interest before issuance of show-cause notice, the penalty is not leviable as laid down in the following cases:-

i. ***Commissioner V/s Rashtriya Ispat Nigam Ltd. [2004 (163) ELT A53 (SC);***

ii. ***CCE V/s Gaurav Mercantiles Ltd. [2005 (190) ELT 176 Bom]; and***

iii. ***CCE V/s S.B. Packaging [[2008 (223) ELT 360 P&H].***

5. Hence, by following ratio of the abovementioned decisions, we set aside the levy of penalty of Rs.14,61,195/- and also we set aside levy of penalty in the Revisional Order-in-Original. Except the above modification, the impugned order is hereby sustained.

6. In the result, the appeal filed by the appellant is partly allowed. Stay petition also gets disposed off.

(Dictated and pronounced in the open court.)

Sd/
(V.Padmanabhan)
Member (Technical)

Sd/
(Justice Dr. Satish Chandra)
President

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