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

Appeals No. ST/75045/2017

Arising out of Order-in-Appeal No. 79/ST/B-II/2016 dated 31.08.2016 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Bhubaneswar.

M/s Pritipal Singh

...APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Bhubaneswar.

...RESPONDENT (S)

APPEARANCE
Shri N. K. Das, Advocate for the Appellant (s)
Shri A. Roy, Supdt. (AR) for the Respondent (s)

CORAM:
SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING & DECISION ;-05.04.2018

ORDER NO..FO/A/76400/2018

Per Shri P. K. Choudhary :

Briefly stated the facts of the case are that the appellant is engaged in providing Manpower recruitment and supply service. A Show Cause Notice was issued to the appellant alleging that the appellant had received taxable value from M/s MESCO Steels Ltd. for the period from 2006-07 to 2010-11 and had not discharged the tax liability amounting to Rs.6,83,262/-. The adjudication order confirmed the demand of tax along with interest and imposed penalty of equal amount of demand under Section 78 and of Rs.10,000/- under Section 77 of the Finance Act, 1994. On appeal, the Commissioner (Appeals) upheld the adjudication order. Hence, the present appeal.

2. The ld. Counsel for the appellant stated that the Adjudicating Authority had erred in calculating the figure of tax to be discharged by the appellant, as the appellant was supposed to pay tax only on the amount received by the appellant and not on the bill raised by the appellant. He further stated that for the period 2006-07 & 2007-08, the appellant had not collected service tax from the service receiver as the appellant was not aware of the tax liability and hence, resulted in non-payment of service tax. He also stated that the appellant has already paid an amount of Rs.7,29,700/- through various challans and had intimated the Commissioner (Appeals) of the deposited amount, which has not been appropriated by the Commissioner (Appeals).

3. The Ld. AR for the Revenue reiterated the findings of the lower authorities.

4. Heard both sides and perused the appeal records.

5. On perusal of records, I find that the appellant had submitted a letter to the office of the Commissioner (Appeals) informing them of the deposit of Rs.7,29,700/- through various challans. The copies of such challans have also been produced before this Tribunal. Therefore, I remand the matter to the Commissioner (Appeals) to verify and appropriate the deposited amount. So far as penalty under section 78 of the Finance Act is concerned, I do not find any material on record to establish fraud, collusion, willful misstatement or suppression of facts on the part of the appellant. Therefore, penalty under Section 78 of the Finance Act is unwarranted. Accordingly, the impugned order is modified and the appeal filed by the appellant is partly allowed.

(Operative part of the order already pronounced in the court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

T.K.