IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: ST/89801/2014

[Arising out of Order-in-Original No: KLH-EXCUS-000-COM-006-14-15 dated 08/07/2014 passed by the Commissioner of Central Excise & Service Tax, Kolhapur.]

MTK Tooling & Engineering Pvt Ltd … ***Appellant***

versus

Commissioner of Central Excise & Service Tax
Kolhapur ***…Respondent***

Appearance:

Shri A B Nawal, Consultant for appellant

Shri M P Damle, Assistant Commissioner (AR) for the respondent

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Hon'ble Shri S K Mohanty, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 02/04/2018
Date of decision: 02/04/2018

ORDER NO: A/85858 / 2018

Per: S K Mohanty:

This appeal is directed against the impugned order dated 08/07/2014, passed by the Commissioner of Central Excise & Service

Tax, Kolhapur.

2. Brief facts of the case are that the appellant herein, is engaged in the manufacture of molding boxes, falling under tariff item No. 8480 30 00 of the Central Excise Tariff Act, 1985. During scrutiny of the records maintained by the appellant, the service tax department observed that apart from manufacturing of excisable goods, the appellant also earns income from labour charges and also incur expenses made on account of transportation i.e. freight. On further investigating into the matter, the department concluded that the services of manufacture of mould, carried out by the appellant are rightly classifiable under taxable category of 'business auxiliary service', as defined under Section 65(19) of the Finance Act, 1994. Accordingly, show cause notice proceedings were initiated against the appellant, which culminated into the adjudication order, wherein service tax demand of ₹ 76,32,595/- was confirmed against the appellant. The amount deposited by the appellant before passing of the adjudication order was appropriated against the adjudged demands. Besides, the impugned order has also imposed penalties under Section 77 and 78 of the Finance Act, 1994 on the appellant.

3. The Learned Consultant appearing for the appellant submitted that the appellant is not contesting the service tax demand along with interest confirmed on it and had also deposited the entire adjudged

amount of service tax and interest before the adjudication of the matter. However, the appellant has assailed the impugned order on the ground that the benefit of Section 80 of the Finance Act, 1994 should be extended to the appellant, for non-imposition of penalties on it. To support such stand, the Learned Consultant submits that non-payment of service tax within the stipulated time was due to the *bona fide* belief that the appellant was not permitted to pay the service tax amount from its CENVAT account. Thus, he submitted that since the service tax liability was reflected in the ST-3 returns, no *mala fides* can be attributed, justifying imposition of penalties on the appellant.

4. On the other hand, the Learned AR appearing for the Revenue has reiterated the findings recorded in the impugned order.

5. Heard both the sides and perused the records.

6. We find that the appellant is not contesting the service tax demand and interest amount confirmed in the adjudication order. The service tax demand along with interest was also paid by the appellant before adjudication of the matter and the same has also been appropriated in the in the impugned order dated 08/07/2014. The appellant has filed this appeal for extending the benefit of Section 80 of the Finance Act, 1994 for non-imposition of penalties on it. In this context, the certificate dated 30/12/2017 of M/s AB Nawal and Associates, Cost Accountants, furnished by the appellants was

perused by us. We find that due to wrong advice of the Excise Consultant, the appellant though had reflected its liability in the ER1 returns, but did not pay the service tax within the stipulated timeframe. Further, we also find that based on the records maintained by the appellant, the department has proceeded for recovery of the adjudged dues. Therefore, *mala fides* cannot be attributed for imposition of penalty on the appellant. The contents of the certificate dated 30/12/2017 issued by the Cost Accountant transpires that benefit of Section 80 should be available, in the interest of justice, for non-imposition of penalties on the appellant.

7. Therefore, the impugned order, to the extent, it imposed penalties under Section 77 and 78 of the Act, are set aside and the appeal is allowed in favour of the appellant.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

(S K Mohanty)
Member (Judicial)

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