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

Appeal No. ST/87019/2018

(Arising out of order-in-appeal No. SK/GST (Audit-II)/MUM/19/Appeals Thane/2018 dated 19.02.2018 passed by Commissioner of CGST & CX, Mumbai)

Infospace Consultancy Pvt. Ltd. **Appellant**

Vs.

C.C.G.S.T Bhiwandi **Respondent**
Mumbai

Appearance:

Shri Rajiv Luthia, C.A. for appellant
Shri O.M. Shivdikar, Asst. Commr (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision : 28.08.2018

FINAL ORDER NO. A/87222/2018

Per: S.K. Mohanty

Imposition of penalty under Section 76 of the Finance Act, 1994, is the subject matter of the present dispute.

2. During the period April to September, 2010, the appellant did not discharge its tax liability within stipulated time frame and the same was deposited into the Government exchequer subsequently, but before the issuance of show-cause notice.

While adjudicating the matter, the original order had imposed penalty under Section 76 of the Act, which was upheld in the impugned order dated 19.02.2018.

3. Learned Consultant appearing for the appellant submits that the service particulars were duly reflected in the books of accounts and in the periodical returns filed by the appellant. Due to acute financial crunch, the service tax was not deposited within the statutory time limit. Thus, he prays for waiver of penalty under Section 80 of the Finance Act, 1994. He has relied on the decision of this Tribunal in the case of *Virtual Marketing (India) Pvt Ltd. v. Commissioner of Service Tax, Mumbai – 2016 (11) TMI 18 – CESTAT-Mumbai,* to state that under similar set of facts and circumstances, by invoking the provisions of Section 80 of the Act, the Tribunal has set aside the penalties imposed on the appellant therein.

4. On the other hand, learned D.R. appearing for Revenue reiterates the finding recorded in the impugned order.

5. Heard both sides and perused the records.

6. The fact is not in dispute that the service tax for the disputed period was paid by the appellant before issue of show-cause notice and the interest amount was paid subsequently,

before the adjudication of the matter. The present issue relates to determination of question whether the benefit of Section 80 of the Act can be extended for non-imposition of penalty under Section 76 ibid. I find that the issue arising out of the present dispute regarding the imposition of penalty under Section 76 of the Act under similar set of facts, is no more res integra, in view of the decision of this Tribunal in the case of *Virtual Marketing (India) Pvt Ltd.(supra).* The relevant paragraph in the said decision is extracted herein under:-

> *"5. As regard the tax liability of the services, we find that services provided by the appellant are indeed taxable and the same is liable for service tax. As regard the penalties under Section 76, 77 and 78, we find that the appellant though not discharged service tax in due time but they have been paying service tax in installment and almost entire demand was paid before issuance of show-cause notice. The appellant given reason for non payment of service tax in time that they were in severe financial crisis. It is also fact that appellant had accounted for entire service tax payable as an outstanding in their books of accounts which shows that they had bonafide intention to discharge the service tax. Even if the service tax was collected but shown as outstanding in the balance sheet, it can be construed that appellant had no malafide intention. Considering over all facts and circumstances of the case we are of the view that appellant has been able to show reasonable cause for non payment of service tax on due time. Interest on the said service tax also paid by the appellant separately as per the direction of this Tribunal. We are of the view that appellant is entitle for waiver of penalty under Section 76, 77 and 78 in terms of Section 80 of the Finance Act, 1994, we therefore set aside the penalties. However the service tax demand confirmed by adjudicating authority and payment made by the appellant along*

with interest is maintained. Appeal is partly allowed in the above terms."

7. In view of the above position of law, as decided by the co-ordinate bench of this Tribunal, I am of the view that the benefit of Section 80 of the Act should be extended to the appellant for non imposition of penalty under Section 76 of the Act. Accordingly, the impugned order, so far as it confirmed the penalty on the appellant is set aside and the appeal is allowed to such extent, in favour of the appellant.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

nsk