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

APPEAL NO: ST/87473/2017
CROSS OBJECTION: ST/CROSS/85085/2018

[Arising out of Order-in-Appeal No: MUM-SVTAX-002-APP-71-2017-18 dated 1st May 2017 passed by the Commissioner of Service Tax-II (Appeals).]

Commissioner of Service Tax-I … ***Appellant***
Mumbai

versus

Shivram Dipaji Gawade
…Respondent

<u>*Appearance*</u>*:*

Shri Dilip Shinde , Assistant Commissioner (AR) for appellant

Shri, M.P. Kasale, Advocate for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing:	**29/08/2018**
Date of decision:	**29/08/2018**

<u>ORDER NO:</u> A / 87280 / 2018

This appeal of Revenue is directed against order-in-appeal no. MUM-SVTAX-002-APP-71-2017-18 dated 1st May 2017 of Commissioner of Service Tax-II (Appeals), Mumbai which, while restricting the recovery to one year from the relevant date and setting aside of the penalty imposed under section 78 of Finance Act, 1994, has dropped the demand for the extended period. The contention of Learned Authorised Representative is that impugned order is not legal and proper as of the reasons for dropping of the demand for extended period, as well as the setting aside of penalty under section 78, of Finance Act, 1994, is not consistent with the findings that have confirmed the demand.

2. Learned Counsel for respondent contends that the first appellate authority had considered all the submissions and had arrived at the conclusion on careful consideration of these.

3. On going through the records and the impugned order, we find that the first appellate authority appears to premised the confirmation of recovery from the appellant before him by the acceptance of such liability for the period after commencement of business in his own right. However, while doing so, he has not offered any justification for waiver of penalty. In the absence of any elaboration for waiver of penalty while upholding the other, it is not possible to ascertain the correctness or the legality of the impugned order. We, therefore, set aside the impugned order and remand it back to the first appellate authority to consider the submissions made by the appellant before him and pass fresh orders explaining the reasons for arriving at the conclusions. The appeal and cross-objection are accordingly disposed off .

(Pronounced and dictated in Court)

(C J Mathew)
Member (Technical)

**/sb*