

2016-TIOL-3082-CESTAT-KOL

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

Service Tax Appeal No.70529/2013

Arising out of the Order-in-Appeal No. 22/BOL/2013, Dated: 14.2.2013
Passed by the Commissioner of Central Excise (Appeals), Kolkata-III

Date of Hearing: 6.9.2016

Date of Decision: 6.9.2016

M/s STOLLBERG INDIA PVT LTD

Vs

**COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX
BOLPUR**

Appellant Rep by: Shri Ankit Kanodia, CA

Respondent Rep by: Sri J Bose, AC, AR

CORAM: H K Thakur, Member (T)

ST - Section 78 has been amended w.e.f. 16/5/2008 according to which simultaneous penalties under Section 76 and 78 of the Finance Act, 1994 cannot be imposed – as the SCN is issued on 11/12/2008 which is after the amendment of Section 78 of the FA, 1994, therefore, penalties under Section 78 of the Finance Act, 1994 are not attracted when Section 76 penalty has been imposed upon the appellant – Appeal allowed: CESTAT [para 4, 5]

Appeal allowed

FINAL ORDER NO.A/75990/2016

Per: H K Thakur:

This appeal has been filed by the appellant against.

Order-in-Appeal No. 22/BOL/2013 dated-14/02/2013 passed by Commr. of Central Excise (Appeals), Kolkata-III as first appellate authority.

2. Shri Ankit Kanodia, C.A. appearing on behalf of the appellant argued that Service Tax of Rs.1,52,141.00 for the period 1/1/2006 to 30/9/2007, with respect to transport charges, was detected by the Department. That after issue of show cause notice the amount was confirmed under Order-in-Original dated 3/6/2010 and the entire amount alongwith interest and Section 76 penalty was paid by the appellant. That appellant is only contesting penalty imposed under Section 78 of the Finance Act, 1994 which has been confirmed by the first appellate authority under Order-in-Appeal dated 14/12/2013 on an appeal filed by the Revenue. It is the case of the appellant that a show cause notice was issued on 11/12/2008 when amended section 78 of the Finance Act, 1994 was already in operation. That it is well accepted legal proposition that simultaneous penalties under Section 76 and 78 cannot be imposed after the amendment. Ld. C.A. relied upon the following case laws in support of his argument:

i) *The South India Paper Mills Ltd. Vs. CCE, Customs & Service Tax, Mysore* - [2016-TIOL-2294-CESTAT-BANG](#)

ii) *The Financers Vs. Commr. of Central Excise, Jaipur*[2007 (8) S.T.R. 7 (Tri.-Del.)]

iii) *Opus Media and Entertainment Vs. Commr. of C.Ex., Jaipur*[2007 (8) S.T.R. 368 (Tri.-Del.)] =
[2007-TIOL-1802-CESTAT-DEL](#)

iv) *Remac Marketing (P) Ltd. Vs. Commr. of Service Tax, Kolkata* [2009 (13) S.T.R. 658 (Tri.-Kolkata)] =
[2008-TIOL-2050-CESTAT-KOL](#)

(v) *Commr. of C. EX., Chandigarh Vs. Krishna Automobiles* [2011 (23) S.T.R. 57 (Tri.-Del.)]=
[2011-TIOL-877-CESTAT-DEL](#)

(vi) *M/s. Raval Trading Company Vs. Commr. of Service Tax* - [2016-TIOL-112-HC-AHM-ST](#)

3. Shri J. Bose, A.C. (A.R.) appearing on behalf of the Revenue argued that first appellate authority was well aware of the amendment carried out in Section 78 of the Finance Act, 1994 w.e.f. 16/5/2008. Ld. A.R. made the Bench go through para 6 of Order-in-Appeal dated 14/2/2013 to argue that penalty under Section 78 of the Finance Act, 1994 has been correctly imposed by the first appellate authority.

4. Heard both sides and perused the case records. The issue involved in the present proceedings is whether simultaneous penalties can be imposed upon the appellant under Section 76 and 78 of the Finance Act, 1994. Section 78 has been amended w.e.f. 16/5/2008 according to which simultaneous penalties under Section 76 and 78 of the Finance Act, 1994 cannot be imposed. In the present case the show cause notice is issued on 11/12/2008 which is after the amendment of Section 78 of the Finance Act, 1994. Therefore, it is held that penalties under Section 78 of the Finance Act, 1994 are not attracted when Section 76 penalty has been imposed upon the appellant.

5. In view of the above observation and the settled proposition of law penalty under Section 78 of the Finance Act 1994 is not sustainable when penalty under 76 of the Finance Act is already paid by the appellant. Appeal filed by the appellant is allowed.

(Operative Part of the Order already Pronounced in the Court)

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