IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

STA No. 10 of 2011 (O&M)

Date of Decision: 9.2.2016

M/s City Cable, Bathinda

....Appellant.

Versus

Commissioner of Central Excise, Ludhiana

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE RAJ RAHUL GARG.

PRESENT: Mr. Jagmohan Bansal, Advocate for the appellant, (in STA No. 10 of 2011).

Mr. Sudeep Singh, Advocate for the appellant, (in STA No. 12 of 2011).

Mr. Sukhdev Sharma, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two appeals bearing STA Nos. 10 and 12 of 2011 as according to learned counsel for the parties, identical questions of law and facts are involved therein. For brevity, the facts are being extracted from STA No. 10 of 2011.

2. STA No. 10 of 2011 has been preferred by the assessee under Section 35G of the Central Excise Act, 1944 (in short "the Act") read with Section 83 of Finance Act, 1994 against the order dated 1.2.2011 (Annexure A-3) passed by the Customs Excise and Service Tax

Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") in STA No. 761/2007, claiming the following substantial questions of law:-

i) Whether the Ld. Tribunal was justified in imposing penalty under Sections 76 and 78 of the Act simultaneously?

ii) Whether the Appellant is entitled to benefit of immunity from penalty as provided under Section 80 of the Act?

iii) Whether the impugned order is perverse and contrary to the law laid down by this Hon'ble Court?

3. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is engaged in providing services of cable operator and Broadcasting Agency. On 14.1.2005, the officers of Central Excise Division, Sangrur and Central Excise Range, Bathinda searched the business and residential premises of the appellant. During the course of search, a number of documents were seized and on scrutiny thereof, it was found that the appellant was providing services of cable operator as well as multisystem operation and broadcasting of advertisement. The services of cable operator were brought under the service tax net w.e.f. 16.8.2002 whereas services of Multi System Operator became taxable w.e.f. 10.9.2004. The respondent found that the appellant during the years from 2001-02 to 2004-05 had rendered above said services but failed to pay service tax amounting to ₹ 11,46,537/-. The respondent issued a notice to the appellant to show cause as to why service tax

amounting to ₹ 11,46,537/- be not recovered by invoking extended period of limitation in terms of Section 73 of the Act and interest be not charged and penalty under Sections 75A, 76, 77 and 78 of the Act be not imposed. The Adjudicating Authority vide order dated 31.7.2006 (Annexure A-1) confirmed the demand raised in the show cause notice and imposed penalty of ₹ 500/- under Section 75A of the Act, ₹ 100/- per day under Section 76 of the Act, ₹ 100/- under Section 77 of the Act and ₹ 11,46,537/- under Section 78 of the Act. Feeling aggrieved, the appellant filed an appeal before the Commissioner (Appeals) specifically challenging the levy of penalty under Sections 76 and 78 of the Act, who vide order dated 5.11.2007 (Annexure A-2) set aside the penalties levied under Sections 75A, 76, 77 and 78 of the Act relying upon the decision of the larger Bench of the Tribunal in **ETA Engineers Limited v. CC (2004) 174 ELT 19**. Against the order, Annexure A-2, the respondent filed an appeal before the Tribunal. The Tribunal vide order dated 1.2.2011 upheld the levy of penalties under Sections 75A, 76, 77 and 78 of the Act holding that short payment of tax is enough to impose penalty under Section 78 of the Act even though the assessee was cooperating in the investigation. Hence, the present appeals.

4. Learned counsel for the appellant submitted that while dealing with Sections 76 and 78 of the Act, this Court in **STA No.48 of 2010 (Commissioner of Central Excise Commissionerate v. M/s First Flight Courier Limited) decided on 28.1.2011; STA No.50 of 2010 (Commissioner of Central Excise, Commissionerate, Ludhiana v. M/s Akash Cable, 1411 Urban Estate, Phase-II, Dugri, Ludhiana) decided on 16.2.2011** and **STA No.13 of 2010 (Commissioner of**

Central Excise vs. M/s Pannu Property Dealers, Ludhaina) decided on 12.7.2010, held that the Act does not envisage imposing of simultaneous penalties. It was further submitted that finding recorded by the Tribunal that the appellant did not deposit 25% penalty within one month is factually incorrect. It is prayed that the appeal be allowed and the matter be remitted to the Tribunal to decide the same afresh.

5. Learned counsel for the revenue supported the order passed by the Tribunal.

6. We have heard counsel for the parties. While considering the scope and ambit of Sections 76 and 78 of the Act, this Court has held in **M/s First Flight Courier Limited, M/s Akash Cable** and **M/s Pannu Property Dealers, Ludhaina's cases (supra)** that Sections 76, 77 and 78 of the Act, do not envisage imposition of simultaneous penalties. This apart, the matter relating to short payment of tax as well requires to be re-examined by the Tribunal.

7. Consequently, without expressing any opinion on the merits of the appeals and as to the rights of the parties, the appeals are allowed, the impugned orders passed by the Tribunal are set aside and the matters are remanded to the Tribunal, for adjudication afresh on all the issues in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(RAJ RAHUL GARG)
JUDGE

February 9, 2016
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