FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CENTRAL EXCISE APPEAL NO. 24/2013
(THE COMMISSIONER OF CENTRAL EXCISE NAGPUR **VERSUS** M/S CALDERYS INDIA REFRACTORIES LIMITED, NAGPUR & ANOTHER)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri S.N. Bhattad with Shri Kunal Nalamwar, counsel for the appellant.

CORAM : SMT. VASANTI A NAIK AND V.M. DESHPANDE, JJ.
DATE : FEBRUARY 22, 2017.

By this central excise appeal, the appellant-department challenges the order of the Central Excise and Service Tax Appellate Tribunal, dated 25.02.2013 allowing an appeal filed by the respondent and holding that penalty could not have been imposed on the respondent under the provisions of Sections 76, 77 and 78 of the Finance Act, 1994.

The respondent-M/s Calderys India Refractories Limited received certain services from their group of companies abroad for which they paid consideration during the period 2008-09 and 2010-11. During the scrutiny, it was found that the respondent had not discharged the service tax liability on the services received from abroad. Immediately, on noticing the mistake, the respondent discharged the service tax liability and paid the service tax along with interest thereon. An intimation as required under Section 73(3) of the Act was filed. A show cause notice was then served on the respondent demanding the service tax and proposing to impose penalty under the provisions of Sections

76, 77 and 78 of the Act. On adjudication, penalties were imposed against the respondent under the said provisions. The appellate authority dismissed the appeal of the respondent against the order of the imposition of penalty. The matter was carried by the respondent before the CESTAT. By the order, dated 25.02.2013, the appeal filed by the respondent was allowed and the orders imposing the penalty were set aside.

On a reading of the order that is assailed in this appeal, it appears that a finding of fact is recorded by the Tribunal on a perusal of the record that the liability to pay service tax arose in January-2009 when the bills for the services rendered by the group of companies were received by the respondent in December-2008. In view of the amended provisions of Section 78 of the Finance Act, as amended on 11.05.2008, the Tribunal held that the provisions of Section 76 could not have been applied for imposing penalty. It was held that since the liability to pay service tax arose in January-2009, the imposition of penalty under Section 76 was not sustainable. It was further found that the respondent had discharged the service tax liability with interest as soon as the short payment was pointed out to it and before the show cause notice was served on the respondent. It was pointed out by the respondent by the letter, dated 22.06.2011 that the service tax as well as interest was paid. The Tribunal has recorded a finding of fact that there was no intention on the part of the respondent to suppress or withhold any information from the department with an intention to evade the payment of service tax. The Tribunal, therefore, rightly held that penalty could not have been imposed on the respondent under the provisions of Sections 77 and 78 of the Act. There is no scope for interference with the said findings in this appeal.

Since no substantial question of law arises in this appeal, we dismiss the appeal with no order as to costs.

JUDGE **JUDGE**

APTE