IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

CWP No.29374 of 2018(O&M)

Date of Decision:-20.11.2019

Post Graduate Institute of Medical Education & Reserarch, Chandigarh.

......Petitioner.

Versus

Commissioner, Central Excise & Service Tax Commissionerate & Ors.

......Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE LALIT BATRA

Present:- Mr. Abhishek K. Premi, Advocate for
Mr. Amit Jhanji, Advocate for Petitioner.

Mr. Sunish Bindlish, Advocate for respondent Nos.1 & 2.

Mr. A.S. Jaswal, Advocate for
Mr. Mahesh Dheer, Advocate for respondent No.3.

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JASWANT SINGH, J.

1. The Petitioner-Post Graduate Institute of Medical Education and Research through instant petition under Article 226 of the Constitution of India is assailing letter dated 21.02.2018 **(Annexure P-5)** vide which the Petitioner has been directed to pay Service Tax, interest and penalty amounting to Rs.13,61,396/- despite the payment of tax, interest and penalty.

2. Few facts emerging from record are that the Respondent-

Service Tax Department issued a show cause notice dated 12.08.2008 to the Petitioner raising demand of Rs.72,62,948/- on account of non-payment of Service Tax on rental income. The Respondent vide order dated 11.03.2015 **(Annexure P-3)** confirmed demand of Rs.69,23,708/- along with interest and imposed penalty of Rs.11,52,660/- under Section 78 & Rs.2000/- under Section 77 of the Finance Act, 1994 (for short 'Act'). The Petitioner prior to adjudication of show cause notice had deposited service tax amounting to Rs.69,16,306/- alongwith interest Rs.7,42,276/- which Respondent appropriated against confirmed demand of tax and interest. The Petitioner deposited Rs.2,90,165/- towards penalty i.e. 25% of penalty under Section 78 of the Act and Rs.2000/- towards penalty under Section 77 of the Act. As per Section 78 of the Act, the Petitioner was eligible to benefit of reduced penalty of 25% on payment of tax, interest and 25% of penalty imposed under Section 78 within 30 days from the date of receipt of copy of order whereas Petitioner short paid Rs.7402/- towards tax though due amount of interest and penalty was paid within time. The Respondent issued impugned notice raising demand of balance amount of tax Rs.7402/- and 75% of penalty imposed under Section 78 as well interest on outstanding tax Rs.7402/-. The Petitioner is assailing notice denying benefit of reduced amount of penalty on account of short payment of tax Rs.7402/-.

3. Counsel for the Petitioner contended that due to inadvertent mistake service tax amounting to Rs.69,16,306/- instead of Rs.69,23,708/- was deposited. The Petitioner deposited tax and penalty prior to adjudication order and 25% of penalty under Section 78 of the Act well within 30 days from the date of receipt of order passed by Adjudicating Authority. The Petitioner is a Government instrumentality and engaged in

providing health services. The Petitioner is dependent upon Government aid, thus demand of penalty on account of inadvertent mistake is not justified and deserves to be quashed.

4. Counsel for the Respondent No. 1 & 2 contended that as per scheme of the Finance Act, 1994, the Petitioner was bound to pay entire amount of tax, interest and 25% of penalty imposed within 30 days from the date of receipt of order whereas Petitioner short paid Rs.7402/- towards Service Tax even though penalty was paid within 30 days from the date of receipt of order, thus Petitioner is not entitled to benefit of reduced amount of penalty.

5. Having scrutinized record of the case and heard arguments of both counsel, we find that concededly there is lapse on the part of Petitioner in making payment of entire amount of Service Tax within prescribed time to avail benefit of reduced amount of penalty, however it deserves to be noticed that Petitioner deposited Service Tax amounting to Rs.69,16,306/- out of Rs.69,23,708/- and interest amounting to Rs.7,42,276/- in 2012-13 i.e. much prior to adjudication order dated 11.03.2015. The Petitioner within 30 days from the date of receipt of order dated 11.03.2015 deposited 25% of penalty imposed under Section 78 of the Act and Rs.2000/- towards penalty imposed under Section 77 of the Act. This shows *bona fide* mistake on the part of Petitioner and considering the nature of organization and nature of services rendered, some leniency may be extended. The Petitioner does not deserve to be penalized on account of *bona fide* mistake on the part of one or another employee of the Petitioner.

6. In view of our above findings, we deem it appropriate to direct Petitioner to deposit balance amount of Service Tax as well interest accrued

thereon within 30 days from the date of receipt of certified copy of this order. If balance amount of Service Tax i.e. Rs.7402/- alongwith interest accrued thereon is paid within 30 days from the date of such receipt, the Petitioner shall not be liable to pay further amount of penalty i.e. 75% of penalty imposed under Section 78 of the Act. We make it clear that this order may not be treated as precedent because we have passed this order keeping in mind nature of organization and the *bona fide* conduct and inadvertent mistake on part of the Petitioner.

(JASWANT SINGH)
JUDGE

(LALIT BATRA)
JUDGE

November 20, 2019
Vinay

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*