CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70808 of 2024

(Arising out of Order-in-Appeal No. 107-ST-ALLD-2024, dated-20/02/2023-2024 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

M/s Laxmi Devi **.....Appellant**
(Moh. Mishrana Bhongaon
Mainpuri, Uttar Pradesh 205262)

VERSUS

Commissioner, CGST & Central Excise, Kanpur
....Respondent
(117/7, Sarvodaya Nagar, Kanpur-208005, U.P.)

APPEARANCE:

Shri Kartikeya Narain, Advocate for the Appellant
Ms. Chitra Srivastava, Authorized Representative for the Respondent

CORAM: **HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

FINAL ORDER NO.-70813/2024

DATE OF HEARING : 06.12.2024
DATE OF DECISION : 06.12.2024

ANIL G. SHAKKARWAR:

Brief facts of the case are that the Appellant had no registration for service Tax during the Financial Year 2016-17. For the Financial Year 2016-17 Appellant had filed Income Tax Return showing their income as Rs.15,65,000/-. Though there was no ST3 Return filed the entire value that was shown as value on which income tax was paid was treated as consideration for providing services and demand of service tax of Rs.2,34,750/- was raised against the Appellant through the Show Cause Notice dated 20.10.2021 by invoking the extended period of limitation under Section 73 of the Finance Act, 1994.

The Appellant Submitted that the Appellant was providing services to Government by teaching motor vehicle driving to applicants and their activity of motor driving teaching was approved by the Deputy Transport Commissioner, Agra. The Appellant also sated in his reply to Show Cause Notice that they were under a *bona fide* belief that their activity was covered by entry (iii) of clause (l) of Section 66D of the Finance Act, 1994. The learned Original Authority treated the entire amount on which income tax was paid was consideration for providing motor driving training and confirmed a demand of Rs.2,34,750/- and imposed penalty. Aggrieved by the said order the Appellant preferred appeal before the Commissioner (Appeals) which was decided through impugned Order-In-Appeal. The learned Commissioner (Appeals) reduced the demand confirmed to Rs.84,750/- and reduced the penalties also to the same extent. Aggrieved by the said order Appellant is before this Tribunal.

2. Learned Counsel for the Appellant has submitted that it is a fact that the Appellant was providing motor driving training and during the year 2016-17 they had received Rs. 6,65,000/- and the same was within the small scale exemption for service tax. He has further submitted that the Original Authority has not ascertained as to what was the amount received for providing motor driving training and further submitted that the extended period of limitation is not applicable in the present case because income tax return is a public document and therefore, allegation of suppression does not sustain. He has relied on Final Order No.70193 of 2024 dated 24.04.2024 of this Tribunal in the case of **Shri Pravesh Kumar Maurya V/s C. CE & CGST, Allahabad having Service Tax Appeal No.70156 of 2024** and submitted that this Tribunal has held that the allegation of suppression cannot sustain if the information is retrieved from the income tax return. He has further relied on the Final Order of this Tribunal in the case of **Kush Constructions V/s CGST NACIN, ZTI, Kanpur reported at 2019 (24) G.S.T.L. 606 (Tri.-All.)**

3. Heard Learned Departmental Representative who has brought attention of this Tribunal to Para 22 of the Order-In-Original dated 17.03.2023 and submitted that the Appellant was providing services.

4. I have carefully gone through the record of the case and submissions made. The Appellant have accepted that they were providing training for motor driving to the applicants during the relevant period and the same was disclosed to the Department in Reply to the Show Cause Notice. The Original Authority did not ascertained from the Appellant as to how much amount was received for providing such training nor he has examined whether such training provision was a service nor he has examined whether small scale exemption is admissible to them and presumed that the entire amount on which income tax was paid as consideration for providing services for training of motor driving. I, therefore, hold that the Original Authority has arrived at service tax payable by the Appellant on the basis of presumption of assessable value. Even the learned Commissioner (Appeals) did not ascertain from the Appellant the exact amount received by them for providing motor driving training and he has also proceeded on presuming that the value for determination of service tax was Rs.5,65,000/-. I, therefore, hold that determination of service tax payable by the Appellant in the present proceeding is on the basis of presumption. I, therefore, set aside the impugned order and allow the appeal.

(Dictated and pronounced in open court)

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

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