IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/1598/2011-CU[DB]

(Arising out of Order-in-Appeal No. 291-ST/MRT-II/2011 dated 30/06/2011 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

Commissioner of Central Excise, Meerut-II **Appellant**

Vs.

M/s Prem Color Lab (P) Ltd., **Respondent**

Appearance:

Shri Pawan Kumar Singh, Supdt (AR) for Appellant
Absent on call, for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 21/06/2018
Date of Decision : 21/06/2018

FINAL ORDER NO-**71186 / 2018**

Per: Archana Wadhwa

Being aggrieved with that part of the impugned order of Commissioner (Appeals) by which he has set aside the penalty imposed on the respondent, revenue has filed the present appeal.

2. No body appeared for the respondent, we have heard the learned A.R. for revenue. It is seen that respondents were engaged in providing photography services and a dispute

arose about the value of the same whereas the respondents claimed that the value of the paper & chemicals etc. is not required to be added to the value of the services. The lower authorities have held that the said goods are not separately sold by the assessee and were consumed while providing services, the value of the same has to be included. However, in respect of penalty, the Commissioner (Appeals) set aside the same by observing as under:-

> *"6.6 As regard to the imposition of the penalty on the appellant. I observe that the Govt. of India in its letter dated 07.04.2004 written to the Punjab Photography Association, has clarified that the deduction is admissible if the relevant invoices show the same. And later on the same had been withdrawn by the CBEC vide its Circular No.233/2/03-CX-4 dated 03.03.2006. I find that there are a number of case decisions in which it has been held that the cost of raw material was not includible in the taxable value. There are several conflicting decisions of the different branches of the Tribunal on the issue of valuation of photography service. Thus, the issue involved in the instant case is that of interpretation of the provisions of law and therefore penalty is not imposable."*

As is seen from the above, the benefit of penalty stands extended to the respondent on the ground that there were conflicting decisions during the relevant period. In fact, we note that that matter was subsequently refer red to before the Larger Bench of this Tribunal in the case of M/s Agarwal Color Lab and the issue was decided against the assessee. It is well settled law that when the decisions of the higher authorities during the relevant period, are available on both the sides, i.e. holding in favour of the assessee as also against them and the matter is subsequently placed before the larger bench of the Tribunal, no mallafide can be attributed to the assessee for following the decision which are in their favour. As such we are of the view that there is no infirmity in the impugned order of Commissioner (Appeals).

3. Accordingly, revenues appeal is rejected.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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