IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

ST/314/2011CU[DB]

(Arising out of Order-in-Appeal No.558-ST/APPL/KNP/2010 dated 29.10.2010 passed by Commissioner(Appeals), Customs & Central Excise, Kanpur.)

M/s. KTL Pvt.Ltd.

…APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Kanpur

RESPONDENT (S)

APPEARANCE

Shri Dharmendra Srivaastava (C.A.) for the Appellant (s)
Shri Rajeev Ranjan (Addl.Commr.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 09.08.2018

FINAL ORDER NO.71909/2018

Per Mrs.Archana Wadhwa :

As per facts on record the appellant is a dealer of Maruti brand of motor vehicles and runs an agency for the same. He has also allowed certain financial institutions to operate from his premises and gets commission/incentives from such institutions in respect of loans given to the buyers of the motor vehicles. By treating the said receipt of commissions as a consideration for providing services falling under the category of 'business auxiliary services', the Revenue raised the demand of Service Tax against the appellant, which stands confirmed to the extent of Rs.2,24,120/- along with confirmation of penalty of identical amount.

2. Ld.Advocate appearing on behalf of the appellant submits that he is not contesting the confirmation of demand and the only challenge is to penalty of equivalent amount imposed upon the appellant. By drawing our attention to various decisions of the Tribunal, he submits that the issue during the relevant period was not clear from doubt and there were decisions on both the sides. In such a scenario, no *mala fide* can be attributed to the assessee so as to invoke penal provisions against them.

3. We find that the Tribunal in the case of Roshan Motors Ltd. v. Commissioner of Central Excise, Meerut [2009 (13) STR 667 (Tri.-Del.)], while upholding the demand on identical activities has set aside the penalties imposed upon the assessee by observing that the issue was a *bona fide* issue of interpretation of question of law and no suppression or misstatement or *mala fide* can be attributed to the assessee. By following the said decision, while confirming the demand of Rs.2,24,120/- we set aside the penalties imposed upon the appellant.

4. Further demand of Rs.1,29,460/- stands confirmed against the appellant by comparing the ST-3 figures with the figures available in the balance sheet. It is seen that apart from alleging that the amounts reflected in the balance sheets are in respect of services rendered by the assessee, Revenue has adduced no evidence to substantiate their above allegation. It is well settled that such comparison of ST-3 figures

with balance sheets figures cannot lead to confirmation of any demand of duty in the absence of any evidence to establish that such income, as reflected in the balance sheet was on account of the services rendered by the assessee. As such we find no justification for confirmation of the said demand. The same is accordingly set aside along with setting aside of penalties.

Appeal is disposed of in above terms.

(Dictated and pronounced in the open Court.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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