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

APPEAL No.ST/270/2012-CU[DB]

(Arising out of Order-in-Appeal No.92/ST/ALLD/2011 dated 21/07/2011 passed by Commissioner (Appeals), Central Excise, Allahabad)

M/s Cinni Foundation **Appellant**

Vs.

Commissioner, Central Excise & Service Tax, Allahabad **Respondent**

Appearance:

Shri Dharmendra Srivastava for Appellant
Shri Pawan Kumar Singh, Superintendant (AR), for Respondent

CORAM:

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

Date of Hearing : 21/08/2018
Date of Decision : 21/08/2018

FINAL ORDER NO.71990/2018

Per: Archana Wadhwa

After hearing both the sides, we find that the appellant has been charged with service tax on the ground that during the period in question they have provided 'Intellectual Property Services' to various clients without payment of Service Tax. It is seen that originally demand of Rs.2,15,198/- was confirmed against the appellant along with imposition of penalty of identical amount each in terms of Section 76 as also 78. Further, penalty was also imposed under Section 77 of the Finance Act to the extent of Rs.14,000/-.

2. On appeal against the order passed by the Original Adjudicating Authority, Commissioner (Appeals) agreed with the assesee's stand that intellectual property services were introduced in this statute w.e.f. 10.09.2004 and no demand can be confirmed for the period prior to the said date. He also accepted the assessee's stand that a part of the service relatable to providing 'Inspection and Certification Services' is not sustainable inasmuch as there is no evidence produced by the Revenue establishing providing of said services. He also accepted the assessee's plea that the penalties cannot be imposed simultaneously under both the Sections i.e. Section 76 & 78.

3. Accordingly, the demand was reduced to Rs.1,53,129 along with confirmation of interest 'Penalty under Section 76 was set aside' and penalty under Section 78 was reduced to the service tax demand amount of Rs.1,53,129/- and penalty under Section 77 was reduced to Rs.1,000/-.

4. Learned C.A. appearing for the appellant is not challenging the confirmation of demand of service tax which already stands deposited by them. His only contest is to imposition of penalty. The Learned C.A. submits that there was a genuine and bona fide doubt in the mind of the assessee as regards their obligation to discharge service tax. As such he submits that in the absence of any mala fide, the penalty should not be imposed.

5. Countering the above argument, Shri Pawan Kumar Singh appearing for the Revenue draws our attention to the fact that appellants got themselves registered with the Service Tax Department on 23.11.2006 but even thereafter they did not discharge their service tax liability. In spite of number of reminders to the appellant no information was provided by them. As such he submits that this indicates the appellant's non-cooperative behavior thus reflecting upon their mala fide and justifying imposition of penalties.

6. On going through the impugned order of Commissioner (Appeals,) we find that the appellant authority has already extended the due benefit to the appellant by agreeing with the contentions raised by the

appellant and has reduced the confirmed tax amount as also has set aside penalty imposed under Section 76. It is also a fact that the appellants, after registration with the Department did not part with any information, which was being repeatedly asked for by the Revenue and did not discharge any service tax liability. As such we are of the view that imposition of penalty upon them is justifiable. We find no reasons to interfere in the impugned order of Commissioner (Appeals).

7. Accordingly, the appeal is rejected.

(Pronounced & Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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