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

APPEAL No.ST/70179/2016-ST[SM]

(Arising out of Order-in-Appeal No. 468-ST/APPL-LKO/LKO/2015 dated 03/12/2015 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

M/s Mera Mann Hotel Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Shri Ashish Kumar Shukla, Advocate for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)

Date of Hearing : 13/09/2018
Date of Decision : 13/09/2018

FINAL ORDER NO-72206/2018

Per: Archana Wadhwa

After hearing both the sides duly represented by learned Advocate Shri Ashish Kumar Shukla appearing for appellant and learned A.R. Shri Mohammad Altaf appearing for revenue, I find that service tax demand stands confirmed against the appellant under various categories. The appellant is not challenging the confirmation of demand and imposition of penalties for various categories but submits that a part of the demand to the tune of Rs.35,908/- is on account of

Renting of Immovable Property Service with imposition of penalty of 50% of the tax amount. He submits that though they are also not challenging the said confirmation of demand under the category of Renting of Immovable Property but they are only challenging the imposition of penalty under the said category. By submitting that during the relevant period, the issue of payment of service tax on Renting of Immovable Property was the subject of various litigations before the various High Courts and ultimately the issue was settled with the Hon'ble Delhi High Court's pronouncement in the case of M/s Home Solutions Retail Ltd. Vs Union of India reported at 2011 (21) STR 109 (Del.). As such, he submits that there is no case of any malafide and prays for setting aside the penalty only.

2. After hearing the learned A.R., I find that they are challenging the penalty of around Rs.17,000/- approx imposed upon the appellant for nonpayment of service tax on Renting of Immovable Property Service. Admittedly, during the period in question, there were decisions by various High Courts, dealing with said issue. In such a scenario, no malafide is attributable on the part of the assessee so as to invoke penal provisions against them. Accordingly, while confirming all the demands of service tax and penalties imposed in respect of other demands, I set aside the penalty

of 50% of the service tax imposed under the category of Renting of Immovable Property.

3. Appeal is thus allowed in above terms.

(Dictated in Court)

(Archana Wadhwa)
Member (Judicial)

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