IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No. ST/70742/2018-ST[SM]

(Arising out of Order-in-Appeal No.166-ST/APPL/LKO/2018 dated 26/02/2018 passed by Commissioner (Appeals), Customs GST & Central Excise, Lucknow)

M/s Goldee Travels **Appellant**

Vs.

Commissioner of Central Excise

& Service Tax, Allahabad **Respondent**

Appearance:

Shri K. K. Srivastava (Advocate) for Appellant
Shri Sandeep Kumar Singh (Dy. Commr.) AR for Respondent

CORAM:

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

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

FINAL ORDER NO. - **72289/2018**

Per: Archana Wadhwa

After hearing both the sides, I find that the appellant during the relevant period was duly registered with the Service Tax Department under the category of 'Tour Operator Service'.

2. During the period October, 2007 to March, 2012, on the basis of the scrutiny of the records from the service recipient i.e. M/s IFFCO Phulpur, Allahabad, it was found that they have provided 'Tour Operator Service', to

the said service recipient and received payments, on which no service tax was paid by them. Accordingly proceedings stand initiated against them resulting in passing of the present impugned order confirming the demand of service tax to the tune of Rs.5,53,530/- alongwith confirmation of interest. In addition penalty of identical amount was imposed under Section 78 of the Act with an option to the appellant to pay 25% of the penalty within a period of 30 days from the date of receipt of the order, in which case the penalty shall stand reduced to 25%. In addition penalty of Rs.10,000/- was imposed under Section 77(2) of the Finance Act, 1994.

3. On appeal against the above order, Commissioner (Appeals) upheld the same but set aside the penalty under Section 76 and 77 imposed by the Original Adjudicating Authority. The present order is impugned before the Tribunal.

4. Learned advocate Shri K.K. Srivastava appearing for the appellant submits that they are not disputing the confirmation of service tax and interest and the only prayer is that the penalty imposed upon them be set aside. Further elaborating on his arguments he submits that original demand was confirmed to the tune of

around Rs.13.83 lakhs without extending the benefit of Notification No.01/2006-ST dated 01/03/2006. Subsequently, they approached the Hon'ble High Court Allahabad who directed the Revenue to re-quantify the tax amount by extending the benefit of the Notification in question. The present impugned order stand passed by the Original Adjudicating Authority in terms of the Hon'ble High Court directions confirming the demand to the Rs.5,53,530/- and the same stands upheld by Commissioner (Appeals). Learned advocate submits that as the benefit of abatement was not originally granted by the Additional Commissioner, there was confusion and the appellant could not deposit the amount, in which case the penalty imposed upon them should be set aside.

5. Countering the argument learned A.R. Shri Sandeep Kumar Singh appearing for the Revenue submits that the service tax confirmed against the assessee belongs to the period October, 2007 to March, 2012. The demand for the first time was confirmed against them vide Order-in-Original dated 12/02/2013. As such, the said confirmation of demand without extending the benefit of Notification No.01/2006-ST has no relevance to nonpayment of service tax by the appellant during the relevant period i.e. October, 2007 to March, 2012. As

such, he submits that the appellants having not paid the service tax during the relevant period, is guilty of *mala fide,* thus justifying invocation of penal provisions.

6. I find that there is no dispute about the facts. The demand confirmed vide the impugned order relates to the period October, 2007 to March, 2012. The same stands raised against the appellant as a result investigations made at the end of the service recipient and on the basis of the records maintained by service recipient. There was no disclosure of providing such services by the appellant and no service tax was paid by them. Learned advocate has not been able to give any justifiable reasons as to why the tax was not being deposited with the Revenue during the relevant period. As such, I find no justification for setting aside of penalty, which already stands reduced to 25%. Inasmuch as the appellants have deposited the entire service tax alongwith interest and 25% penalty, I uphold the imposition of 25% of penalty.

7. In view of the above, appeal is rejected.

(Dictated & Pronounced in Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Lks