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

ST/2828/2012-CU[DB]

(Arising out of Order-in-Appeal No.269-270/ST/LKO/2011 dated 31.05.2012 passed by Commissioner(Appeals), Customs, Central Excise & Service Tax, Lucknow.)

M/s. Nagar Nigam Aligarh

…APPELLANT(S)

VERSUS

Commissioner of Central Excise & Service Tax, Lucknow

RESPONDENT (S)

APPEARANCE

Absent on Call for the Appellant (s)
Shri Mohd. Altaf (Asstt.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 19.11.2018

FINAL ORDER NO.72661/2018

Per Mrs.Archana Wadhwa :

On matter being called, nobody appeared on behalf of the appellant. Accordingly we have heard the learned A.R. for the Revenue and have gone through the impugned order.

2. It is seen that the tax liability stands confirmed against the assessee on the ground that they have provided services of "sale of space or time for advertisement', which are liable to tax. We find that the said issue is no more *res integra* and stands settled by various Tribunal decisions laying down that the said activity having been

discharged under the statutory duties, cannot be held to be taxable. Reference can be made to Tribunal's decision in the case of M/s.Pimpry Chinchwad Municipal Corporation v. CCE, Pune reported as 2018 (9) GSTL 394 (Tri.-Mum.). It was held in the said decision that such charging of fees to the agencies was a statutory levy for which municipal corporations had powers and such levies did not amount to any service, so as to call for payment of Service Tax. There are other decisions also to the same effect being decision in the case of CCE, Lucknow v. M/s.Lucknow Nagar Nigam (Final Order No.72089/2018 dated 10.08.2018) as also in the case of CCE, Allahabad v. Nagar Nigam (Final Order No.71126/2018 dated 22.05.2018).

3. Inasmuch as the issue stands decided, we find that the demand of Service Tax on the said count is unsustainable. Accordingly the same is set aside along with setting aside of interest and penalty.

4. Further demand of Service Tax under the category of "renting of immovable property service", also stands confirmed against the appellant along with imposition of penalty. It is seen that the appellants had not contested the said demand before Commissioner(Appeals) and had only requested to re-quantify the same, by extending the threshold small scale exemption limit Notification. The said plea of the appellants stand accepted by Commissioner(Appeals) and demand on the said count stands reduced to Rs.50,121/- along with imposition of penalty of identical amount.

The appellant's challenge is only to imposition of penalties on the said count on the ground that they being statutory bodies, cannot be attributed with any *mala fide* intention so as to invoke the penal provision against them.

5. We find that the Tribunal in the case of Nagpur Municipal Corporation v. Commissioner of Customs & Central Excise [2018 (12) GSTL 62 (Tri.)] has observed that the corporation being a statutory body and having *bona fide* belief of non-applicability of Service Tax, penalty is not imposable. To the same effect is the Gujarat High Court's decision in the case of Surat Municipal Corporation v. Commissioner of Central Excise & Customs [2017 (50) STR 265 (Guj.)].

In view of the foregoing we find no justifiable reasons to impose any penalty upon the appellant. As such while confirming the demand of Service Tax under the category of "renting of immovable property", we set aside the penalty imposed upon them on the said count.

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)

sm