IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No.ST/379/2011-CU[DB]

(Arising out of Order-in-Original No. 07/ST/Commissioner/2010 dated 15/12/2010 passed by Commissioner of Central Excise, Kanpur)

M/s Touraids (I) Travel Services, Agra **Appellant**

Vs.

Commissioner of Central Excise & Customs, Kanpur **Respondent**

Appearance:

Absent on call, for Appellant
Shri Mohammad Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing & Decision : 19/11/2018

FINAL ORDER NO-72688 / 2018

Per: Archana Wadhwa

On matter being called, neither anybody appeared nor is there any adjournment request in spite of notice of hearing having been sent to them well in advance. Accordingly, we have heard the learned A.R. for revenue and have gone through the impugned order.

2. It is seen that the appellant was registered with the Service Tax Department for providing Tour Operator Service. They were discharging their service tax liability on the consideration received for transportation, after availing the benefit of abatement to the extent of 60% in terms of Notification No.01/2006.

3. Revenue conducted searches in their business premises on 06.02.2007. It was found that the appellant had undertaken a centralized registration in their Agra office and were discharging service tax liabilities, accordingly, in respect of the other branches. It was further found that apart from the consideration of services or transport, the appellant were also raising supplementary invoices for the other services like Guide Services, Porter Services, Monument Entrance Fee Services, Assistant Services, Food Services etc. The value of the said services was not being included by the appellant in value of the taxable services.

4. Accordingly, by entertaining a view that such additional consideration received through supplementary invoices is also required to be added in the value of the Tour Operator Services, revenue proceeded against the appellant for confirmation of demand of service tax in terms of Rule 5 of the Service Tax (Determination of Value) Rules, 2006. The show cause notice was issued by invoking the longer period of limitation and stands culminated into the impugned order passed by the Commissioner vide which he confirmed the service tax of Rs.1,10,93,002/- along with confirmation of interest and imposition of penalty of identical amount in terms of Section 78 of the Finance Act, 1994. In addition, penalties were imposed under various other Sections of the Finance Act.

4. After going through the impugned order, we note that the revenue's entire case is based upon the provisions of Rule 5 of the Service Tax (Determination of Value) Rules, 2006. By relying upon the said rule, the adjudicating authority has observed that the value of supplementary services is required to be added in the value of the taxable services being provided by the appellant.

We note that the said Rule 5 of Service Tax (Determination and Value) Rules, 2006 stands held as *ultravires* by the Hon'ble Delhi High Court in the case of M/s Intercontinental Consultants & Technocrats Pvt. Ltd. Vs Union of India reported at 2013 (29) STR 9 (Del.). As such the same cannot be invoked for adding value of reimbursable services being provided by the appellant. Accordingly, we hold, by following the said decision of Hon'ble Delhi High Court that the demand is not sustainable. Consequentially, the demand along with interest and penalty stands set aside and appeal is allowed with consequential relief to the appellant.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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