

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

ST/70298/2016-CU[DB]

(Arising out of Order-in-Appeal No.208/ST/ALD/2015 dated 03.11.2015 passed by Commissioner(Appeals), Customs, Central Excise & Service Tax, Allahabad.)

Reena Arora

...APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Allahabad
RESPONDENT (S)

APPEARANCE

Shri Dharmendra Srivastava (C.A.) 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 : 05.12.2018

FINAL ORDER NO.72785/2018

Per Mrs.Archana Wadhwa :

The challenge in the present appeal is only to imposition of penalties upon the appellant, against whom demand of Service Tax stand confirmed for the period October, 2009 to March, 2011 under the category of 'renting of immovable property'.

2. The learned C.A. appearing for the appellant is not contesting the said demands and submits that the same has since been deposited. He further submits that such non-deposit during the relevant period was on account of the fact that lot of litigation was going on in respect of

tax on 'renting of immovable property' and the Hon'ble Delhi High Court in the case of Home Retail Solutions Ltd. v. Union of India [2009 (14) S.T.R. 433 (Delhi.)] had set aside the leviability of Service Tax under the said category. As such he submits that there can be no *mala fide* on the part of the appellant, so as to attract the penal provisions. He also places reliance on the Tribunal's Final Order No.72285/2018 dated 31.03.2018 in the case of Sri Virendra Swaroop Cheritable Trust wherein under similar circumstances, penalty was set aside.

3. After hearing the learned A.R. for the Revenue we find that the Tribunal in the above-referred case has held as under:-

"7. Having considered the rival contentions, I find that the taxation under the head renting of immovable property service under Sub-clause (zzzz) of clause (105) of Section 65 had been struck down sometime in the year 2009 by Hon'ble Delhi High Court. Thereafter the tax under the said heading was again revalidated by Finance Act, 2010 with retrospective effect from 01/06/2007. Further, I find that there is no case of concealment made out by the Revenue, in the show cause notice, as the appellant had recorded the transaction in the books of accounts ordinarily maintained and had also disclosed such turnover in their income tax returns. Thus the non-compliance was due to the striking down of the levy duty by the High Court under the said head. Accordingly, I hold, the extended period of limitation is not available to Revenue. Further, I hold that the penalties imposed are not sustainable and accordingly the penalties under Section 78 and 77 are set aside. Thus the appeal is allowed in part as indicated hereinabove. The appellant shall be entitled for consequential benefits, in accordance with law."

4. By observing that during the relevant period, the Hon'ble High Court of Delhi has struck down the relevant provisions of 'renting of immovable property' and as such there could be no *mala fide* on the part of the assessee so as to impose penalty upon him. As such by following the said decision, we set aside the penalty imposed and allow the appeal to that extent.

(Operative part of the order was pronounced in the open Court.)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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