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

APPEAL No. ST/70425/2016-CU[DB]

(Arising out of Order-in-Appeal No.55-ST/APPL-AGRA/LKO/2016 dated 14/01/2016 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

Deputy Commissioner of Service Tax, Agra **Appellant**

Vs.

M/s Kalyani Buildwell Pvt. Ltd. **Respondent**

Appearance:

Shri Mohd. Altaf (Asstt. Commr.) AR for Appellant
Request for Adjournment for Respondent

CORAM:

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

Date of Hearing : 07/12/2018
Date of Decision & Pronouncement : 28/01/2019

FINAL ORDER NO. - **70148/2019**

Per: Archana Wadhwa

Being aggrieved with that part of the impugned order of Commissioner (Appeals) vide which he has reduced the penalty to 25%, Revenue has filed the present appeal. While reducing penalty Commissioner (Appeals) has held as under:-

"As per second proviso to Section 78 of the Act, as applicable during the relevant period, if the assessee

makes payment of such service tax alongwith interest within thirty days from the date of communication of order determining such service tax, the amount of penalty liable to be paid by them shall be twenty five percent of the tax so determined. I find that no such option to the appellant has been given in the order by the adjudicator. I am of the considered view that the benefit of reduced penalty can be extended to the appellant even at this stage. Therefore, I reduce the penalty imposed upon the appellant under Section 78 of the Act to the extent of 25% of the service tax so not levied or paid or short-levied or short-paid subject to fulfillment of conditions of second proviso to Section 78 ibid. Penalties imposed under Section 77(1)(d) and Section 77(2) of the Act are upheld."

2. After hearing learned A.R., as nobody appeared for the respondent, we find that the Tribunal in the case of M/s Perfect Security & Placement Services vide Final Order No.72231/2018 dated 14/09/2018 has observed as under:-

"3. We find that the Hon'ble Supreme Court in the case of Commissioner of Central Excise & Customs V/s R. A. Shaikh Paper Mills Pvt. Ltd. reported as 2016 335 E.L.T. 203 (S.C.) has dealt with an identical situation and referring to the Board's Circular dated 22.05.2008, which lays that the provisions contained in first & second proviso to Section 11AC should be mandatorily mentioned in

> *the order itself by the Adjudicating Authority, has observed that in this case there was no mention of reduced penalty under Section 11AC of the Central Excise Act in the Order-In-Original, the order of the High Court allowing benefit of reduced penalty subsequently is not required to be interfered with."*

3. Inasmuch as the issue stands decided in favour of the assessee, we find no reasons to interfere in the impugned order of Commissioner (Appeals). Revenue's appeal is accordingly rejected.

(Pronounced in Open Court on - 28/01/2019)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Lks