IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.ST/70599/2017-CU[DB]

(Arising out of Order-in-Appeal No.151/ST/APPL-LKO/2017 dated 30/05/2017 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

M/s Madhu India Deco Ltd. **Appellant**

Vs.

Commissioner, Customs Central Excise & Service Tax, Lucknow

Respondent

Appearance:

Shri Dharmendra Srivastava for Appellant
Shri Pawan Kumar Singh, Superintendent, (AR), for Respondent

CORAM:

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

Date of Hearing/ Decision : 14/02/2019

FINAL ORDER NO.**70279 / 2019**

Per: Archana Wadhwa

After hearing both the sides duly represented by learned chartered accountant, Shri Dharmendra Srivastava on behalf of the appellant and learned A.R., Shri Pawan Kumar Singh on behalf of the Revenue, we find that demand of service tax to the tune of Rs.10.93 lakhs (Approx.) stands confirmed against the appellant along with imposition of penalty on the ground that they have received services of foreign commission agent and have not discharged their service tax liability on reverse charge basis.

2. The appellant during the course of adjudication claimed the benefit of Notification No.18/2009-ST dated 07.07.2009 vide which the commission paid to foreign commission agent stands exempted, subject to certain procedural formalities required to be adopted by the exporter. The benefit of such notification does not stand extended to the appellant on the ground that they have not filed EXP-2 Forms within 15 days of completion of every 6 months which is one of the conditions of the Notification.

3. The appellant had taken a stand that the said procedural formality was not completed by them as they were not aware of the same and in any case having fulfilled the other substantive conditions of the notification, mere not filing of the form would not take away their right to the exemption. For the above contention they have relied upon various decisions.

4. On going through the impugned order, we find that the Revenue is otherwise not disputing the applicability of the notification in question including one of the substantial condition of the commission being less than 1% of the value of the export of goods. The Revenue's only ground is that the appellant has not filed EXP-2 Forms, well within time.

We note that the Tribunal in the case of M/s Praj Industries Ltd. V/s Commissioner of Central Excise, Pune-III reported at 2017 (3) G.S.T.L. 341 (Tri. –Mumbai) as also in the case of M/s Radiant Textiles Ltd. V/s Commissioner of C.EX., Chandigarh-II reported at 2017 (47) S.T.R. 195 (Tri.- Chan.) and also in the case of M/s Coromandel Stampings & Stones Ltd. V/s C.C.E. & S.T., Hyderabad-II reported at 2016 (43) S.T.R. 221 (Tri.- Hyd.), dealt with an identical situation and held that mere non-filling of the EXP-1 or EXP-2 Forms will not result in denial of the benefit of Notification No.18/2009-ST in the absence of fulfillment of substantive conditions. It stands observed that this filing of Forms is only a procedural and technical lapse on the part of the assessee, thus not making the assessee disentitled to the benefit of the notification.

5. Inasmuch as the issue stands decided by the above referred decisions, we, by following the same, set aside the impugned order and allow the appeal with consequential relief to the appellant.

(Pronounced & Dictated in Court)

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

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