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

APPEAL No.ST/70653/2018-CU[DB]

(Arising out of Order-in-Appeal No. 104-ST/APPL/KNP/ADG-NACIN/2017-18 dated 26/03/2018 passed by Commissioner of Central Excise & Customs (ZTI), Kanpur)

M/s U.P. State Handloom Corporation Ltd. **Appellant**

Vs.

Commissioner of Central Excise & S.T., Kanpur **Respondent**

Appearance:

Shri Dharmendra Srivastava, Chartered Accountant for Appellant
Shri Gyanendra Kr Tripathi, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 14/02/2019
Date of Decision : 14/02/2019

FINAL ORDER NO-**70303 / 2019**

Per: Archana Wadhwa

The appellant is a UP State Government Corporation enacted under the Companies Act. During the period 2009-14 they had rented certain shops belonging to them which activity falls under the category of "Renting of Immovable Property" and is liable to service tax. Further, the appellant was also allowing certain people to keep their goods in the said rented shop for further sale. Revenue entertained a view that such activity of the appellant falls under the category of 'Business Support Services'.

2. In view of the above, proceedings were initiated against them vide show cause notice dated 24.04.2015 raising demands under the category of "Renting of Immovable Property" as also providing 'Business Supports Services' during the period 2009-14. The said demand was assailed by the appellant on the point of limitation by submitting that the appellant is a U.P. State Corporation and being a statutory body, cannot be held guilty of any suppression or misstatement so as to invoke the extended period. It was also pleaded that the service of "Renting of Immovable Property" was the subject matter of litigation before various High Courts and the same was being contested. As such, there was confusion during the relevant period as regards the taxability of said service.

3. However, the lower authority did not find favour with the said contention of the appellant and accordingly confirmed the demand along with imposition of penalty of identical amount. Hence, the present appeal.

4. The contention of the learned Advocate appearing on behalf of the appellant is that the 'Business Support Services', categorized by the lower authorities is also primarily 'Renting of Immovable Property", as when the said corporation allowed other persons to keep their goods in the shop for further sale, the same would amount to 'Renting of Immovable Property'. In any case, he fairly agrees that the activities falling under category of 'Renting of Immovable Property, provided by them,

were taxable and he is challenging the demand only on the point of limitation. He submits that the appellant is a UP State Corporation and being a statutory body under State Government cannot be saddled with any allegations of malafide. By referring to various precedent decisions, he submits that it stands held by the various higher courts that the state corporation cannot be held to be having any malafide for not paying the taxes. Inasmuch as, the demand in present case stands raised by invoking the longer period, he prays for setting aside the impugned order on the point of limitation itself.

5. After hearing the learned A.R. appearing for revenue, we take note of the Tribunal's decision in the case of Krishi Utpadan Mandi Samiti reported as 2017-TIOL-1435-CESTAT-ALL wherein while taking note of the earlier decision of the Tribunal being Final Order No.70969/2016 dated 02.06.2016, the appeal was allowed on the point of limitation by observing as under:-

> "7. Accordingly, in the interest of justice, we allow this appeal also in part holding that extended period of limitation is not invocable. There is no contumacious conduct and/or suppression of facts on the part of the appellant, which is a statutory body. Further, on enquiry being made by revenue they gave the data as per the records which have not been found to be untrue. We, further find that as per the Data given and relied upon by the revenue, service tax have been levied on rent receipts even from post office, which is not a commercial organization. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating authority to re-determine the amount of

> service tax payable for the normal period giving the benefit of cum duty basis. While calculating the duty payable the adjudicating authority will have regard to the Circular **No.89/7/2006-ST** clarifying the tax liability of statutory organization, etc. All penalties imposed are hereby deleted. We also direct the appellant to appear before the adjudicating authority with their representation and calculation of duty liability and seek an opportunity of hearing. The adjudicating authority is expected to pass a reasoned order within a period of 90 days from the date of receipt of a copy of this order."

6. As is seen from the above it stands concluded that the extended period cannot be invoked against statutory body. Inasmuch as, no contumacious conduct or suppression of facts can be attributed to them. By following the said decision of the Tribunal, we hold that the demand is barred by limitation. Accordingly, we set aside the impugned order and allow the appeal. If any part of the demand falls within the limitation period, the original adjudicating authority would calculate the same and intimate the appellant, who would pay the same along with interest.

7. Appeal is disposed of in above terms.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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