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

APPEAL No.ST/70451/2016-CU[DB]

(Arising out of Order-in-Original No. 10/Comm/ST/GZB/2015-16 dated 28/12/2015 passed by Commissioner of Central Excise & Service Tax, Ghaziabad)

M/s KDP Infrastructure Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise & S.T., Ghaziabad **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 : 18/02/2019
Date of Decision : 18/02/2019

FINAL ORDER NO-**70334 / 2019**

Per: Anil G. Shakkarwar

When the matter was called there was no representation on behalf of the appellant. Accordingly, we have heard the learned A.R. Shri Mohammad Altaf, Assistant Commissioner for revenue and perused the records. On perusal of record, we note that the appellant is a service provider and were engaged in providing services of construction of residential complex. It was noticed by revenue that appellant was allegedly undervaluing the assessable value by not including car parking space charges and electricity meter conversion charges in the assessable value. Therefore, proceedings were initiated for recovery of service tax for the year 2010-11 and 2011-12 in respect of such charges which were collected by the appellant from the customers. Before issuance of show cause notice appellant had paid the entire amount of Service Tax of Rs.81,17,881/- and also paid interest of Rs.26,68,929/- on the same. The said show cause notice has proposed to appropriate both service tax and interest so paid. The contention of the appellant before the Original Authority was that the appellant had paid tax and interest required before the issuance of show cause notice, therefore, as provided under Sub-section (3) of Section 73 of Finance Act, 1994 there was no need to issue show cause notice. However, the Original Authority held the lapse to be fraud and confirmed the demand and appropriated service tax and interest paid and imposed penalty equal to service tax under Section 78 of the Finance Act, 1994. Aggrieved by the said order, appellant is before this Tribunal.

2. On perusal of record, we note that the issue of inclusion of car parking space charges and electricity meter conversion charges were issues which were subject to interpretation. We also note that the amounts collected by the appellant from the customers were reflected in their financial accounts. Therefore, we do not find the case to be attempt of fraud.

Therefore, we do not find ourselves in agreement with the finding of original authority that the appellant has committed any fraud. As such, we are satisfy that in the present case there was no need for issuance of show cause notice since the tax payable along with interest were paid by the appellant before issue of show cause notice. We, therefore, hold that the penalty imposed on the appellant is not sustainable.

3. Accordingly, by setting aside the penalty imposed under Section 78 of the Finance Act, 1994 we modify the impugned order and allow the appeal.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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