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

APPEAL No.ST/70037/2019-ST[SM]

(Arising out of Order-in-Appeal No. 405/ST/Alld/2018 dated 14/12/2018 passed by Commissioner of CGST & Central Excise (Appeals), Allahabad)

Shri Sanjay Kumar Srivastava, Proprietor **Appellant**

Vs.

Commissioner of Central Excise, Varanasi **Respondent**

Appearance:

Shri Kartikeya Narain, Advocate for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing	:	04/04/2019
Date of Decision	:	04/04/2019

FINAL ORDER NO-**70717 / 2019**

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by Shri Kartikeya Narain, learned Advocate for the appellant and Shri Sandeep Kumar Singh, learned Deputy Commissioner (A.R.) for revenue, I note that appellant was having registration for service tax with the Department of Revenue. Revenue initiated inquiry against the appellant. The appellant was issued with a show cause notice dated 01.11.2017 wherein it was stated that appellant was working as recovery agent for various financial companies and on consideration received as recovery agent appellant was required to pay service tax and therefore certain information was tried to be collected from the appellant. Simultaneously, enquiries were made from the Income Tax Authorities and revenue received copies of 26AS return for the financial year 2012-13, 2013-14, 2014-15 and 2015-16 from Income Tax Authorities. The information in the said return indicated the tax deduction at source under Income Tax Act under various Section such as 194A, 194C, 194H and 194J of Income Tax Act, 1961. It was stated in the show cause notice that TDS under Section 194A was on interest and therefore the said receipt of income was not consideration for any service. However, it appeared to revenue that all the receipt by appellant for which tax was deducted under Section 194C, 194H and 194J of Income Tax Act, 1961 was consideration for providing Recovery Agent Service to various financial institutions. For the aforesaid period such consideration was around Rs.81 lakhs and demand of service tax of Rs.9.37 lakhs was raised against the appellant. The appellant submitted before the Original Authority that they were receiving commission on reimbursement of insurance premium which was covered by Section 194C of Income Tax Act and that appellant was receiving commission which was covered by Section 194 H of Income Tax Act and appellant was receiving reimbursement of goods and administrative expenses as per agreement with the Bank which was covered by Section 194J of Income Tax Act. The Original Authority confirmed the demand and imposed equal penalty. Appellant preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) has upheld the confirmation of demand to the tune of Rs.4,08,658/- and penalty of Rs.2,04,329/- under Section 78 of Finance Act, 1994. Aggrieved by the said order, appellant is before this Tribunal.

2. Learned Counsel for the appellant has contended that there is no proof that appellant is recovery agent, particularly when no enquiry was made with any banking or financial institution whether appellant was recovery agent and whether the amount received by the appellant was towards commission for providing the said service.

3. Learned A.R. for revenue has supported the impugned order. Further, he contended that appellant has accepted before Commissioner (Appeals) that he is a recovery agent.

4. After hearing the submissions made by both the sides I note that there is no evidence on record to establish that the service tax demand was in respect of amount received by the appellant as recovery agent. Particularly, in the absence of any enquiry made with the banks and financial institutions about the money paid to the appellant whether the same was for providing services of recovery agent. I, therefore, do not find the impugned order to be sustainable.

5. I, therefore, set aside the impugned order and allow the appeal.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

akp