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

APPEAL No.ST/70583/2018-CU[DB]

(Arising out of Order-in-Appeal No. 29-ST/APPL-KNP/LKO/2018 dated 19/01/2018 passed by Commissioner of Customs, CGST & Central Excise (Appeals), Lucknow)

M/s P.G. Associates, **Appellant**

Vs.

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

Appearance:

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

CORAM:

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

Date of Hearing : 22/02/2019
Date of Decision : 22/02/2019

FINAL ORDER NO-**70736 / 2019**

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by Shri Dharmendra Srivastava, learned Chartered Accountant on behalf of appellant and Shri Pawan Kumar Singh, learned A.R. for revenue, we note that the service tax confirmed against the appellant through the impugned order is Rs.1,76,765/- with interest and equal penalty. We note that appellant was providing certain services to various banks such as HDFC, ICICI, Kotak Mahindra Bank etc. and was registered for payment of service tax for the period from 01.04.2010 to 10.07.2014 appellant also had filed ST-3 returns. Appellant was issued with a show cause notice dated 20.10.2015 by invoking extended period of limitation demanding service tax of Rs.2,50,381/-. On contest the same was adjudicated through Order-in-Original dated 28.10.2016 wherein the Original Authority confirmed the demand of service tax of Rs.1,76,765/- along with interest and equal penalty. The learned Commissioner (Appeals) did not interfere in the said order except that he has given an option of reduced penalty. Further, we note that the relevant paragraphs of the said show cause notice dated 20.10.2015 are as follows:-

> "07. And whereas, the Notice did not provide any relevant information so as work out the proper service tax liability upon him. As the information (**RUD-2**) provided by the Bank did not contain amount paid for the period 01.04.14 to 10.07.14 (the liability to pay service tax was of the Notice till 10.07.14), a letter, vide this office C. No. V912)P&I/Agra/Rec. Agents/23/2014/6017 dated 17.09.15 (**RUD-8**), was written to the Bank, asking them to provide the information regarding gross amount paid to the noticee in lieu of service of Recovery Agents received by them for the year 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15 (upto 10.07.14) in prescribed format again a reminder vide even C. No. 7248 dated 30.09.2015 (**RUD-9**) was written to the bank for the above stated period requesting therein to submit the certified list of payments along with PAN number. The Bank did not provide any detail in this regard.

8. On the basis of the year-wise/information (**RUD-2**) furnished by the bank and information (ST-3 Returns) furnished by the noticee (**RUD-7**) in respect of Agra Commissionerate jurisdiction, Service Tax (Short Paid) liability on the "gross amunt" received by the Noticee **M/s. P.G. Associates, Room No.5, 1st Floor, Ganesh Arcade, Near New Shah Market, Nehru Nagar, Agra,** is computed hereunder as the Table given below:-

Sl. No.	**Period**	**Value of taxable service**	**Rate of Service Tax including Ed. Cesses**	**Service Tax payable**	**Service Tax Paid as per ST-3 Returns**	**Differential Service Tax liability**
1	**2**	**3**	**4**	**5**	**6**	**7**
1.	01.04.10 to 31.03.11	2123725.00	10.30%	218744	159667	59097
2.	01.04.11 to 31.03.2012	1203185.00	10.30%	123928	91302	32626
3.	01.04.12 to 31.03.13	1023703.00	12.36%	126530	79354	47176
4.	01.04.13 to 31.03.14	1323419.00	12.36%	163575	63726	99849
5.	01.04.14 to 10.07.14	487312.00	12.36%	60232	48578	11654
	Total:-	**6161344.00**		**693009**	**442627**	**250381**

2. It is very clear from perusal of relevant paragraphs of the said show cause notice that appellant was paying service tax and was filing ST-3 returns. Further, the differential service tax was demanded on the basis of information received from third party without examining whether the payments made by the third party to the appellant was in respect of taxable service provided by the appellant. In the

absence of such information that the demanded service tax was lawfully payable by the appellant, such demand is not sustainable.

3. We, therefore, set aside the impugned order and allow the appeal.

(Pronounced in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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