CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.71057 of 2018-CU[DB]

(Arising out of Order-in-Appeal No.189-ST/APPL/KNP/ADG-NACIN/2017-18 dated 26/04/2018 passed by Additional Director General, National Academy of Customs, Indirect Taxes and Narcotics, (ZTI), Kanpur)

M/s Agarwal Samaj **.....Appellant**

(128/291, K-Block, Kidwai Nagar, Kanpur-208011)

VERSUS

Commissioner of Central Excise **....Respondent**

(Kanpur)

APPEARANCE:

Shri Dharmendra Srivastava (C.A.), for the Appellant
Shri Gyanendra Kumar Tripathi, Authorized Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. - 70867/2019

Date of Hearing : 22.04.2019
Date of Decision : 22.04.2019

PER: ARCHANA WADHWA

Demand of service tax to the tune of Rs.12,70,841/- stands confirmed against the appellant under the category of "Mandap Keeper Service" for the period 2010-11 to 2014-15 alongwith confirmation of interest and imposition of penalties.

2. Learned Chartered Accountant appearing for the appellants submits that the appellant is a registered society under the provision of Section 12(A) of the Income Tax Act. They have their own property, which is being let out by them to their own members as also to non members for carrying out various functions. In lieu of the same, they receive donation as also rent, which is in addition to the electricity expenses or the dispensary expenses etc.

3. Revenue has raised the demand on the ground that the said activity of the appellant amounts to providing 'Mandap Keeper Services'. Learned Chartered Accountant submits that since they were doing social service, they were under the impression that no tax liability would arise on them. However, on being pointed out by the Revenue they immediately deposited the entire service tax liability alongwith interest, even though the same was for the extended period. In such a scenario, the Authorities should not have issued the show cause notice as per Section 73(3) of the Finance Act. As such, he submits that impositions of penalties upon them are not justified. For the above proposition, he is relying upon various decision of the Tribunal.

4. After hearing learned A.R. appearing for the Revenue and having gone through the impugned order, we note that the appellant is not contesting the demand which already stands deposited by them alongwith interest, prior to the

show cause notice. Tribunal in the case of U.B. Engineering Ltd. vs. Commissioner of Central Excise, Rajkot - 2009 (16) S.T.R. 457 (Tri.-Ahmd.) has observed that where the service tax stands paid prior to issuance of the show cause notice, there was no requirement to issue the show cause notice in terms of Section 73(3) of the Finance Act, 1994, as long as there is no *mala fide* intention on the part of the assessee not to pay the tax.

In the present case, we find that the appellant is a society primarily made for welfare of the society and as soon as their liability was pointed out, they deposited tax alongwith interest. In such a scenario, no *mala fide* can be attributed to them, in which case the issuance of the show cause notice for imposition of penalty was not called for. Accordingly while upholding the demand and interest, we set aside the penalty imposed upon the appellant and allow the appeal to that extent.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks