CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 70568 of 2018-[SM]

(Arising out of Appeal No. 360-ST/APPL/LKO/LKO/2017 dated 30/11/2017 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

M/s Bijay Shankar Chaudhari, ...Appellant

(91-A Ayodhya Kunj, Ner Kheraia Moda, Agra-280001)

VERSUS

Commissioner of CGST & Central Excise, ...Respondent

(Agra)

<u>APPEARANCE:</u>

Shri S.P. Ojha Consultant, for the Appellant
Shri Shiv Pratap Singh, Deputy Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO. 71042 / 2019

Date of Hearing : 12/03/2019
Date of Pronouncement : 23/05/2019

PER: ARCHANA WADHWA

As per facts on record the appellant is engaged in the promoting products and goods manufactured by M/s Samsonite South Asia Pvt. Ltd. on commission basis, which has been held as service, falling under taxable category of 'Business Auxiliary Services'. The appellant had paid the entire service tax of Rs.3,29,593/- confirmed against them and the only challenge in the present appeal is that said demand should be re-quantified by taking the same as cum tax value and penalty imposed upon them should be set aside.

2. As regards the cum tax value, I find that the law is settled and the benefit has to be extended. Accordingly, I direct to the lower authority to re-quantify the demand. As regards penalty, I find that the same stands imposed under Section 78 of Finance Act on the ground that the appellant had earlier filed a declaration under the Voluntary Compliance Encouragement Scheme, by declaring their Service Tax liability to the extent of Rs.1,86,572/- and as such there was malafide on their part. As per the appellant they were not aware of the taxability of commission entered by them and in the absence of any evidence to the contrary reflecting upon the malafide on their part, imposition of penalty is not justified. I note that the revenue has not advanced any evidence to show that such tax was not being paid by the appellant with any malafide. As such, I am of the view that imposition of penalty upon them is not justified and the same is accordingly set aside.

3. Appeal is disposed of in above manner.

(Pronounced in open court on-23/05/2019)

(Archana Wadhwa)
Member (Judicial)

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