CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70881 of 2016-Division Bench

(Arising out of Order-in-Appeal No. NOI/SVTAX/000/APPEALS-I/68/2016-17 dated 18/05/2016 passed by Commissioner of Central Excise (Appeals-I), Meerut)

M/s Super Overseas Pvt. Ltd. **.....Appellant**

(C-151, Phase II Noida)

VERSUS

Joint Commissioner (Service Tax), Noida **....Respondent**

(C-56/42, Sector-62, Noida)

APPEARANCE:

Shri Abhinav Kalra, Chartered Accountant for the Appellant
Shri Sandeep Kumar Singh Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO.- 71115 / 2019

Date of Hearing : 17 June, 2019
Date of Decision : 17 June, 2019

PER: ARCHANA WADHWA

The appellants are manufacturer of readymade garments, which were being exported by them. For receiving export orders, the appellant procured the service of commission from foreign based commission agents. In terms of the provisions of Section 66A, the appellants were under legal obligation to pay service tax on the said commission amount paid to foreign based commission agents, on reverse charge basis.

2. As the appellants were not discharging their tax liability, audit objected to the same and the appellant deposited the service tax to the tune of Rs.24,96,995/- alongwith interest. Thereafter proceedings were initiated against them for imposition of penalty by way of issuance of a show cause notice dated 03/07/2014. The said show cause notice culminated into an order passed by the Original Adjudicating Authority imposing penalty of Rs.24,96,995/-. The said order was upheld by Commissioner (Appeals) and hence the present appeal.

3. The appellant's contention is that inasmuch as the entire service tax was deposited alongwith interest prior to the issuance of show cause notice, the matter should have been concluded and there was no requirement of issuance of any show cause notice. He further submits that in any case they were entitled to exemption Notification No.18/09-ST, which exempts service tax payable on the commission agents as long as the commission paid is less than 1% of FOB value of the goods and subject to satisfaction of the other condition. As such, he submits that there could not be any *mala fide* on their part so as to impose penalty.

4. Learned A.R. appearing for the Revenue submits that as the appellant was not discharging the service tax liability nor claiming benefit of the Notification in question during the relevant period, penalty stands rightly imposed upon them.

5. After having gone through the impugned orders, we find that admittedly the commission paid to the foreign based agent was exempted if the same is less than 1% of the FOB value of the goods. However there were other procedural conditions also, subject to satisfaction of which the said exemption was to be extended. As such, we are of the view, that in case the appellant would have claimed the benefit of the Notification in question

they would have been entitled to the benefit of the same. In such a scenario, the appellant cannot be said to be guilty of *mala fide* so as to invoke penal provisions against them. Accordingly, we set aside the penalty imposed upon the appellant and allow their appeal to that extent.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

Lks