CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 71134 of 2018-[DB]

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APPL-1965-17-18 dated 27/03/2018 passed by Commissioner of Central Tax & Customs (Appeals), Noida)

M/s Notional Fertilizers Ltd. **.....Appellant**

(A-11, Sector-24, Noida)

VERSUS

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

(Noida)

APPEARANCE:

Shri R. Krishnan, Advocate for the Appellant
Shri Pawan Kumar Singh, Supdt, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO-71208 / 2019

Date of Hearing : 24/06/2019
Date of Decision : 24/06/2019

PER: ANIL G. SHAKKARWAR

After hearing both the sides duly represented by Shri R. Krishnan learned Advocate on behalf of the appellant and Shri Pawan Kumar Singh Superintendent Authorised Representative on behalf of revenue, we note that appellants are public sector undertaking of government of India. The appellants had availed facility of External Commercial Borrowing from State Bank of India, New York Branch and initially did not pay service tax on reverse charge mechanism and on being pointed out before issuance of show cause notice paid the same along with interest. Further, they also engaged legal consultants in the foreign country and made payment to the lawyers. Initially did not pay service tax under the Reverse Charge Mechanism in respect of legal charges paid to the foreign lawyers but before issuance of show cause notice they paid the service tax under reverse charge mechanism along with interest. However, the proceedings initiated by revenue, culminated into passing of impugned Order-in-Appeal. Therefore, the impugned order penalties were imposed upon the appellant under Section 78 of Finance Act, 1994 in respect of service tax on external commercial borrowing. Further, there is a direction by learned Commissioner (Appeals) to impose 50% of penalty in respect of 'Legal Consultancy Services' after verification of recalculation. Said two penalties have been challenged by the appellant. We note that the appellant is a public sector undertaking of Government of India and as held in many decisions of this Tribunal, public sector undertaking and Government of India Departments do not have any intention to evade payment of duty. Some such decisions are as follows:-

- 2009 (14) STR 359 (Tri.-Ahmd.) in the case of BSNL Vs Commissioner of Central Excise, Ahmedabad.
- 2013 (291) ELT 449 (Tri.-Ahmd.) in the case of Indian Oil Corporation Ltd. Vs Commissioner of Central Excise, Ahmedabad.

- 2019 (24) GSTL 422 (Tri.-Ahmd.) in the case of M/s Kandla Port Trust Vs Commissioner of Central Excise & Service Tax, Rajkot.

2. Taking the above stated decisions into consideration, we hold that the appellant did not have any intention to evade payment of tax. Therefore, we set aside the penalties imposed on the appellant under Section 78 of Finance Act, 1994 and also set aside that part of the impugned Order-in-Appeal through which there has been direction to impose 50% of penalty in respect of 'Legal Consultancy Service'. The other small issues involved in the appeal are not pressed by the appellant.

3. In above terms, appeal is allowed by modification of the impugned order.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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