CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.71070 of 2018-Single Member

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-1922-17-18 dated 26/03/2018 passed by Commissioner of Central Tax (Appeals), Noida)

M/s BLK Lifestyle Ltd. .....**Appellant**

(A-245, Sector-19, Noida, U.P.-201301)

VERSUS

Commissioner of Central Goods &

Service Tax, Noida-I ....**Respondent**

(C-56/42, Sector-62, Noida, U.P.-201307)

APPEARANCE:

Shri Jatin Mahajan, Advocate for the Appellant
Shri Pawan Kumar Singh, Authorised Representative for the Respondent

CORAM:

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

FINAL ORDER NO.- 71224 / 2019

Date of Hearing : 27 June, 2019
Date of Decision : 27 June, 2019

PER: ARCHANA WADHWA

Appellant is duly registered with the Service Tax Department for providing various services. An audit was conducted in their business premises on July, 2013 for the period of April, 2011 to March, 2013. Certain discrepancies were pointed out and it was found that the appellant had not deposited the service tax correctly. The appellant accepted such mistakes on their part and deposited the entire service tax of Rs.12,58,196/- alongwith interest.

2. Thereafter proceedings were initiated against them by way of issuance of a show cause notice dated 07/10/2016 proposing imposition of penalty. On adjudication the Lower Authorities imposed equal amount of penalty under Section 78 as also penalty of Rs.10,000/- under Section 77 of the Finance Act. The

said order of the Authorities below stands challenged only in respect of penalty.

3. The appellant's contentions is that there were some minor calculation error on their part and the major part of the demand relates to the period from January to March, 2013 for which he filed ST-3 returns. As such, it cannot be said that there was any *mala fide* on their part. They have immediately deposited the service tax in which case no show cause notices should have been issued to them in terms of provisions of Section 73(3) of the Finance Act.

4. Apart from the above contention raised by the learned advocate, I also find that proceedings stands initiated against the appellant by way of show cause notice dated 07/10/2016 which stands issued almost after three and half years of the date of audit conducted in their premises. Hon'ble Allahabad High Court in the case of Commissioner of Central Excise & Service Tax vs. Triveni Engineering & Industries Ltd. 2015 (317) E.L.T. 408 (All.) and also in another case of Commissioner of Central Excise vs. Avadh Transformer Pvt. Ltd. 2014-TIOL-1502-HC-ALL-CX held that the notice issued after a period of twenty two months from the date of audit is barred by limitation. By applying the ratio of above decisions, I find that notices issued after three and half years from the date of audit cannot be sustained. Accordingly while upholding confirmation of service tax and interest, which is not being disputed by the appellant, I 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)

Lks