CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.70198 of 2018

(Arising out of Order-in-Appeal No.453/ST/Alld/2017 dated 09/12/2017 passed by Commissioner (Appeals), CGST & Central Excise Appeal Commissionerate, Allahabad)

M/s Gyan Sons

(Proprietor-Shri Pravin Kumar) **.....Appellant**

(D-63/10, Reliance Petrol Pump,

Near Harsh Gases, Mehmoorganj, Varanasi 221010, U.P.)

VERSUS

The Commissioner, CGST & Central Excise

Appeal Commissionerate, Allahabad **.....Respondent**

(38-M.G. Marg, Civil Lines, Allahabad, U.P.)

APPEARANCE:

Shri Arvind Shukla, Advocate for Appellant
Shri Santosh Kumar Agarwal, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 30 October, 2019
DATE OF DECISION : 30 October, 2019

FINAL ORDER NO.71832/2019

PER : ANIL G. SHAKKARWAR

After hearing both the sides duly represented by Shri Arvind Shukla, learned Advocate appearing on behalf of the appellant and Shri Santosh Kumar Agarwal, learned A.R. appearing on behalf of the respondent, we note that during the period from 2009/2010 to 2011/2012, the appellant had received around Rs. 27,00,000 (twenty seven lakhs) from M/s. Reliance Industries Limited with whom they have entered into an agreement dated 19.08.2006, wherein it was agreed between the two parties that the appellant would purchase petroleum product from Reliance Industries Limited and resale the same to customers as per the policy of M/s. Reliance Industries Limited. During the period of dispute there was no sale and purchase of petroleum products by the appellant from M/s. Reliance Industries Limited however, the aforestated amount was received by the appellant. It appears to Revenue that the said amount received was consideration towards renting of property by the appellant to M/s. Reliance Industries Limited. Therefore, the proceedings were initiated for demand of service tax of around Rs.2.35 lakhs under the service of renting of immovable property. On perusal of record and after hearing both the sides, we note that there is no agreement for renting of property between the two parties and it is a fact that even during the period when the goods were being purchased by the appellant and resold there was no payment of rent by M/s. Reliance Industries Limited to the appellant. Further, the show cause notice was issued to the appellant on 23.04.2015 for the period from 2009/2010 to 2011/2012. We note that the said consideration to be treated as consideration towards renting of immovable property is presumptive. Further, the show cause notice also hit by limitation. We, therefore, both on merit and limitation hold that the impugned order is not sustainable. We set aside the impugned order. In above terms the appeal is allowed.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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