CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.50371 of 2015

(Arising out of Order-in-Appeal No.175-176/ST/LKO/2014 dated 10/10/2014 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

M/s Silver Star Traders **.....Appellant**

(Sitapur Road, Opposite Kabir Mandir,
Lucknow, U.P.)

VERSUS

Commissioner of Central Excise
& Service Tax, Lucknow **.....Respondent**

(7-A, Ashok Marg, Lucknow)

WITH

Service Tax Appeal No.2532 of 2012

(Arising out of Order-in-Appeal No.174-ST/APPL/KNP/2012 dated 22/05/2012 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Kanpur)

M/s Silver Star Traders **.....Appellant**

(Near Prakashan Kendra, Opposite
Kabir Mandir, Sitapur Road, Lucknow)

VERSUS

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

(7-A, Ashok Marg, Lucknow)

APPEARANCE:

Shri Rishabh Mishra, Chartered Accountant 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)

FINAL ORDER NOs. 71913-71914 / 2019

DATE OF HEARING: 05 September, 2019
DATE OF PRONOUNCMENT: 26 November, 2019

ARCHANA WADHWA

As per facts on record, the appellant was registered Service Tax payee under the category of "Clearing & Forwarding Agency Services". During the relevant period, appellant was availing the benefit of small scale exemption under Notification No.06/2005 dated 01.03.2005. Scrutiny of their records revealed that they had received excess payment from their principal to the tune of Rs.8,63,703/-., thus making them ineligible to the benefit of small scale exemption Notification.

2. In view of the foregoing, proceedings were initiated against them by way of issuance of a Show Cause Notice dated 20.04.2012 proposing confirmation of service tax to the tune of Rs.1,91,961/-. The said notice culminated into an order passed by the Assistant Commissioner confirming the demand alongwith interest and imposition of penalties. The said order was upheld by the Commissioner (Appeals) and hence the present appeal.

3. After hearing both the sides duly represented by Shri Rishabh Mishra, learned Chartered Accountant appearing for the appellant and Shri Santosh Kumar Agarwal, learned A.R. appearing for the Revenue, we find that the short issue required to be decided is as to whether the reimbursement of expenses incurred on account of the principal as 'Pure-Agent' are required to be added in the assessable value of the services or not. The Lower Authorities have relied upon the provision of Rule 5(2) of Service Tax (Determination) Rules, 2006.

We note that the said rule stands declared *ultra virus* by the Hon'ble Delhi High Court in the case of

Intercontinental Consultant & Technocrats Pvt. Ltd. Vs. Union of India reported at 2013 (29) S.T.R. 9 (Del.).

4. In view of the same, the impugned order is required to be set aside and appeals to be allowed with consequential relief to the appellant. We, order accordingly.

(Order Pronounced in the open Court on - 26 November, 2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

BKP