CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70352 of 2016-[DB]

(Arising out of Order-in-Appeal No.16-ST/ALLD/2016 dated 12/01/2016 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Allahabad)

M/s O.P. Sharma, **.....Appellant**

(Quarter No.:SR-6, Renusarag Colony, Sonebhadra)

VERSUS

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

(Allahabad)

APPEARANCE:

Shri S.B. Shukla, Advocate for the Appellant
Shri Anupam Kumar Tiwari, Authorised Representative for the Respondent

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

FINAL ORDER NO-70008 / 2020

DATE OF HEARING : 06 January, 2020
DATE OF DECISION : 06 January, 2020

PER: ARCHANA WADHWA

The only challenge in the present appeal is to penalty imposed by the lower authorities to the extent of 25% of involved service tax amount. It is seen that the appellants were registered with Service Tax Department under the category of "Maintenance and Repair Service", "Manpower Recruitment Agency Service" and were discharging their tax liability accordingly. Revenue, by entertaining a view that Provident Fund and Bonus is also required to be added in the assessable value of the services, raised a demand of Rs.1,15,215/- for the period April, 2010 to March, 2011 by raising a show cause notice dated 07.10.2011. The said show cause notice culminated into impugned order, confirming demand of duty along with confirmation of interest and imposition of penalty equivalent to 25% of tax. The order of the Original Adjudicating Authority was upheld by Commissioner (Appeals) and hence the present appeal.

2. After considering the submissions of both the sides, we find that differential amount of service tax was deposited by the appellant even before the issuance of show cause notice. The issue of payment of service tax on the PF and Bonus amount was a disputed issue during the relevant time and was under litigation before various Higher Judicial Authorities. As such, it can be simply concluded that nonpayment of service tax on PF and Bonus amount was not on account of any malafide on the part of the appellant so as to attract the penal provisions.

3. As such, we are of the view that imposition of penalty of even 25% of tax amount is not justifiable. Accordingly, while confirming the service tax amount along with interest, if any, we set aside the penalty imposed by the lower authorities and allow the appeal to that extent.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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