CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHANDIGARH</u>

REGIONAL BENCH - COURT NO. I

Appeal No. ST/60856/2019-ST[SM]

(Arising out of Order-in-Appeal No. LUD-EXCUS-001-APP-2397-19 dated 09.05.2019 passed by the Commissioner (Appeals), Ludhiana)

Harinder Singh **......Appellant**
(S/o Late Sh Kartar Singh, H.No. 1148,
Urban Estate, Kapurthala,
Punjab - 144601)

VERSUS

Commissioner of CE & ST, Ludhiana **......Respondent**
(Central Excise House, F-Block, Rishi Nagar,
Ludhiana, Punjab - 141001)

<u>APPEARANCE:</u>

Present for the Appellant: None

Present for the Respondent: Mr. Tarun Kumar, Authorised Representative

<u>CORAM:</u> **HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)**

FINAL ORDER NO. 61027/2019

DATE OF HEARING: 13.11.2019
DATE OF DECISION: 13.11.2019

PER ASHOK JINDAL:

The appellant is in appeal against the impugned order with the prayer that the amount of service tax paid is to be considered as cum tax price.

2. None appeared on behalf of the appellant nor any request for adjournment has been received. Considering the issue is in narrow compass, therefore, the matter is taken up for consideration.

3. The facts of the case are that a demand of service tax for the period 2011-12 to 2014-15 has been confirmed against the appellant under the category of 'Renting of Immovable Property'. The appellant paid the entire amount of service tax along with interest and 25% of service tax as penalty.

4. By way of this appeal, the appellant is praying that the amount of rent received by them is to be treated as cum tax amount as they have not received any amount over and above the amount received from their service recipients on account of renting the property. Admittedly, it is a fact on record that the appellant has not received any amount over and above the amount for the services provided by them. In these circumstances, the amount received by them is treated as cum service tax; therefore, the demand of service tax is required to be re-quantified. As the said benefit is required to be allowed to the appellant, in these circumstances, I modify the impugned order holding that the amount of services provided by the appellant be treated as cum service tax price and accordingly, the benefit of reduced amount of service tax, interest and penalty be granted to the appellant. In these circumstances, the matter is remanded back to the adjudicating authority to quantify the amount of service tax payable by the appellant and to quantify the interest and penalty to be imposed on the appellant. If any amount paid by the appellant in excess shall be refunded to the appellant within one month of the adjudication. The adjudicating authority shall quantify

the correct demand as discussed above within one month of the receipt this order.

5. In the above terms, the appeal is disposed off by way of remand.

(Dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMEBR (JUDICIAL)

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