CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI.
PRINCIPAL BENCH, COURT NO. II

Service Tax Appeal No.52408/2018-SM

[Arising out of Order-in-Appeal No.103(CRM)/ST/JDR/2017-18 dated 23.02.2018 passed by the Commissioner of Central Goods and Service Tax (Appeals),G-105, New Jodhpur Industrial Area, Jodhpur-352]

M/s.Kota Agrobase Services Pvt.Ltd. **Appellant**
119, New Grain Mandi,
Kota-324007 (Rajasthan).

Versus

Commissioner of Central Goods and Service Tax, Customs & Central Excise, **Respondent**
G-105, New Jodhpur Industrial Area,
Jodhpur-342 003.

APPEARANCE:

Shri Abhishek Jaju, Advocate for the appellant
Ms. Tamnna Alam, Authorised Representative for the respondent

CORAM: Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing/ Decision: 15.04.2019

FINAL ORDER NO.50541/2019

ANIL CHOUDHARY:

Heard the parties.

2. The issue in this appeal is whether the Commissioner (Appeals) has rightly retained the penalty imposed under Section 70 (although reduced) and also penalty under Section 78 of the Act.

3. The brief facts are that the appellant was registered with the Department under the category of "Management Consultancy Service". It appeared to the Revenue that the appellant was not paying service tax on "renting of immovable property". The Superintendent vide his letter dated 7.10.2011 asked to submit details of payment of service tax. Based on the documents provided by the appellants, the service tax for the services

rendered under "Renting of Immovable Property" was determined at Rs.31,724/-, Rs.1,76,509/- and Rs.1,02,544/- for the year 2009-10, 2010-11 & 2011-12 (upto September respectively). The appellant was directed by the Superintendent to deposit the amount of service tax vide letter dated 3.2.2012. In response thereto, the appellant deposited the service tax vide challans dated 10.12.2011, 13.12,2011 and 14.03.2012 and filed intimation with the Superintendent on 16.03.2012. As per para 11 of the show cause notice, the appellant paid service tax along with interest. Further, a show cause notice dated 21.11.2012 was issued proposing to demand service tax of Rs.3,10,777/- with cess and the amount already paid was proposed to be appropriated. Further, proposal was also made to impose penalty under Section 77 and 78 of the Act. As regards invocation of extended period of limitation, it has been alleged in the show cause notice that the appellant was engaged in "renting of property" for the business purposes and they have suppressed the taxable turnover and were not paying the service tax and also not filing the correct service tax returns with the Department.

4. I find from the contentions and on the perusal of the records, that the appellant was under bonafide belief that as they were not the owners of the property, they had acquired the property under some arrangements by paying some rent, which have further been leased for the business purposes, and the differential rents so earned was within the threshold limit for payment of service tax. Accordingly, under such bonafide belief, they did not deposit the tax. However, on being so pointed out by the Department, the appellant deposited the service tax along with interest. I find from the cogent explanation given by the appellant that the same has not been found to be untrue, although it has not been found tenable under the provisions.

5. In this view of the matter, I hold that there is no conditions precedent available for imposition of penalty under Section 78 of the Act. Accordingly, the penalty under Section 78 is set aside. Sofar as the penalty under Section 77 is concerned, the same is not interfered by this Tribunal. The appeal is allowed.

[dictated & pronounced in open court]

(Anil Choudhary)
Member (Judicial)

ckp