

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 51371 of 2019

(Arising out of Order-in-Appeal No. 44/CRM/ST/JDR/2019 dated 09.01.2019 passed by the Commissioner (Appeals), Central Excise & CGST, Jodhpur.)

M/s Umed Bhawan Palace

Palace Road, Kota
Rajasthan-324001

Appellant

VERSUS

Commissioner, CGST, Excise

Customs- Udaipur

142-B, Sector-11, Hiran Magri,
Udiapur
Rajasthan-313002

Respondent

APPEARANCE:

Shri Anurag Soan, Advocate for the Appellant

Shri Ishwar Charan, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50647 / 2022

Date of Hearing: 22.07.2022

Date of Decision: 22.07.2022

ANIL CHOUDHARY:

Heard the parties.

2. The issue involved in this appeal is whether the penalty under Section 78 have been rightly imposed.

3. Admitted facts are that the appellant is rendering service of accommodation in hotel and restaurant service. The period in dispute

is July 2012 to March 2016. Pursuant to audit, it appeared to revenue that appellant have not discharged service tax on three invoices of legal services/fee of advocate, totalling Rs. 41,000/-, attracting service tax under RCM Rs. 5540/-. Pursuant to audit note dated 17/03/2017, show cause notice dated 19/06/2017 was issued proposing to demand tax and also proposing to impose penalty. The appellant admitted their liability, deposited the service tax of Rs. 5540/- on 10/07/2017. However, vide O-I-O dated 30/11/2017, the said amount was confirmed and appropriated and further equal amount of penalty was imposed under Section 78, observing that had the audit not taken notice, the tax liability would have escaped.

4. Being aggrieved the appellant had filed the appeal before the Commissioner (Appeals) who have been pleased to confirm the penalty, dismissing ground of appeal on this issue. Appeal was allowed in part.

5. Learned Counsel for the appellant urges that there is no deliberate non-compliance in depositing the tax under the RCM. That only due to over site or clerical mistake the tax could not be deposited. Further, as the appellant is paying output tax and legal services being input service, they were entitled to Cenvat credit and thus, the situation is revenue neutral. Accordingly, he prays that penalty imposed maybe set aside.

6. Learned Authorised Representative for revenue relies on the impugned order.

7. Having considered the rival contentions, I find that there is no deliberate non-compliance and further the situation is wholly revenue

neutral. Thus, there is no incentive for the appellant to evade payment of service tax under the RCM. Accordingly, I allow this appeal and set aside the penalty under Section 78. Appeal allowed.

(Order dictated in open Court)

Anil Choudhary
Member(Judicial)

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