CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70033 of 2018

(Arising out of the Order in Appeal - 419-ST-APPL-ALLD-LKO-2016, dated - 21/06/2016 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow)

M/s Anshu Electrical Works .....**Appellant**
(Basera Colony, Near Engineering College
Canal Road, Gorakhpur, UP)

VERSUS

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

APPEARANCE:

Shri Kartikeya Narain, Advocate for the Appellant
Shri A.K. Choudhary, Authorized Representative for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.-70413/2024

DATE OF HEARING : 05.03.2024
DATE OF DECISION : 05.03.2024

P. K. CHOUDHARY:

The present appeal has been filed by the appellant assailing the Order-In-Appeal No. 419-ST-APPL-ALLD-LKO-2016, dated - 21/06/2016 passed by Commissioner (Appeals) Customs, Central Excise & Service Tax, Lucknow.

2. The facts of the case in brief are that the Appellant is a proprietary firm and was earlier engaged in providing installation service and subsequently works contract service to M/s Bharat Sanchar Nigam Ltd.[1] It is also a fact on record that the Appellant has closed all business permanently from 2008-09 onwards. BSNL invited bids for installation of electric equipments. Appellant participated in the tender process whereupon he was awarded work for installation of electric equipment and thereafter Appellant provided installation

[1] BSNL

service to BSNL until 2011-12. Thereafter during the period 2011-12 Appellant were awarded works contract of maintenance of equipment installed earlier as the nature of service was more appropriately classifiable as 'works contract service'. Appellant in the month of November 2011 obtained registration with the Service Tax Department. On the basis of some information received from BSNL Show Cause Notice [2]dated 02.08.2013 was issued invoking the extended period of limitation and alleging that the Appellant had received Rs.98,56,483/- during the period 2008-09 to 2012-13 from the BSNL for providing taxable services. Reply to the SCN was filed and vide the Order-In Original dated 27.07.2014, demand of Rs.3,64,887/- as proposed in the SCN was confirmed. Penalty of equal amount under Section 78 and penalty of Rs.10,000/- under Section 77(2) of the Act has been imposed. An amount of Rs.18,097/- has been appropriated. Being aggrieved the assessee filed appeal before the First Appellate Authority and the learned Commissioner (Appeals) vide the impugned Order-In-Appeal passed the following order:-

> *In view of above, I find that the appellant is only entitled for benefit of Cum-duty value, thus extending the said benefit the Service Tax liability of the appellant during the period 2008-09 to 2012-13 is re-calculated as below:-*

Financial Year	Gross Receipt (inclusive of Service Tax)	Benefit of SSI Exemption under under notification no. 06/2005-ST dated 01.03.2005, as amended	Taxable Value inclusive of Service Tax	Rate of Service Tax	Taxable value of services exclusive of Service Tax	Service Tax payable
i	ii	iii	iv(ii-iii)	v	vi	Vii(iv-vi)
2008-09	**1860396**	**1000000**	**860396**	**4.12%**	**826350**	**34046**
2009-10	**2900281**	**0**	**2900281**	**4.12%**	**2785518**	**114763**
2010-11	**1613839**	**0**	**1613839**	**4.12%**	**1549980**	**63859**
2011-12	**2936066**	**0**	**2936066**	**4.12%**	**2819887**	**116179**
2012-13	**545901**	**0**	**545901**	**4.12%**	**524300**	**21601**
Total	**9856483**		**8856483**		**8506035**	**350448**

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[2] SCN

Thus from above computation, the Service Tax liability of the appellant comes to Rs. 3,50,448/-. Therefore, I uphold the demand of Service Tax amounting to Rs. 3,50,448/- under Section 73(2) of the Finance Act, 1994 alongwith interest thereon under Section 75 of the Act ibid.

Regarding penalty of Rs. 10,000/- under Section 77(2) of the Finance Act, 1994 imposed on the appellant, I am convinced with the findings of adjudicating authority that the appellant has contravened the certain provisions of Finance Act, 1994, thus, liable to be penalized. Therefore, I uphold the penalty of Rs. 10,000/- imposed on the appellant under Section 77(2) of the Finance Act, 1994.

As regards penalty under Section 78 of the Finance Act, 1994 on the appellant, I find that the details of taxable values of the appellant being rendered by them in the relevant periods are available in the specified records, thus, the penalty is liable to be reduced to fifty per cent of the short paid amount of Service Tax. I impose a penalty of 1,75,224/-upon the appellant as per first proviso of Section 78(1) of the Finance Act, 1994.

In view of above discussion & findings, I pass the following order.

I modify the Order-in-Original No. 07(ST)2014 dated 27.07.2014 passed by the Assistant Commissioner, Central Excise & Service Tax, Division-Gorakhpur, as discussed above.

The Appeal No. 391-ST/2014 dated 17.09.2014 filed by M/s. Anshu Electrical Works, Basera Colony, Near Engineering College, Canal Road, Gorakhpur is allowed, partially, in above manner.

3. Being aggrieved the appellant has filed the present appeal before the Tribunal.

4. The learned Advocate appearing on behalf of the Appellant submits a chart as under:-

F.Y.	**Gross Amount Received**	**Taxable amount after allowing abatement of 67%* (Not. No. 01/2006-STdated 01.03.2006)**	**SSI Threshold Limit****	**Taxabl e Value**	**Service Tax Short Paid**
2008-09	18,60,396/-	6,13,931/-	10,00,000/-	NIL	NIL
2009-10	29,00,281/-	9,57,092/-	--Do--	NIL	NIL
2010-11	16,13,839/-	5,32,566/-	--Do--	NIL	NIL
2011-12	29,36,066/-	9,68,902/-	--Do--	NIL	NIL
2012-13	5,45,901/-	1,80,147/-	--Do--	NIL	NIL

***** As admitted by the Commissioner (Appeals) internal page 4 of the impugned order wherein he has applied 4.12% by treating the rate of Service Tax.
****** Notification No. 06/2005 dated 01.03.2005, as amended by Notification No. 05/2007 dated 01.03.2007, Notification No. 08/2008 dated 01.03.2008, by which taxable services of aggregate value not exceeding Rupees Ten lakh rupees in the preceding financial year were exempted.

5. It was submitted that the excess amount of Service Tax of Rs 18,097/-, paid by the appellant on 31.03.2013 for F.Y 2012-13 is liable to be refunded.

6. Having considered the rival contention and on perusal of Explanation "B" to the said Notification No. 6/2005-S.T., dated 1-3-2005, we find that the said explanation authorizes exclusion of consideration received towards providing service which are exempt from whole of Service Tax leviable thereon. On perusal of the said Notifications No. 9/2004 and No. 1/2006-ST, we find that 60% of the consideration received is exempted from the whole of the Service Tax leviable thereon. Therefore, we find that for the purpose of calculation of aggregate value as per said explanation "B", 60% of the consideration received by the appellant for which exemption was admissible does not need to be taken into consideration. We also find from the record that after excluding 60% consideration the aggregate value of clearance for the years 2008-09, 2009-10,2010-11,2011-12 and 2012-13 in the present case is within the permissible limit for the exemption under the said Notification No. 6/2005-ST, dated 1-3-2005 which exempts taxable service from whole of Service Tax leviable under Section 66 of the Finance Act, 1994. We, therefore, hold that the impugned Order-in-Appeal is not sustainable.

7. In view of the above discussions, the impugned order is set aside. The appeal filed by the Appellant is allowed with consequential relief as per law.

(Operative part of the order is pronounced in open court)

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

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