IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.ST/70272 & 70273/2018-CU[DB]

(Arising out of Order-in-Original No. 03/Commissioner/(Audit) Noida/17-18 dated 15/11/2017 passed by Commissioner of Central Goods & Service Tax (Audit), Noida)

M/s Sunwarld Devlopers Pvt. Ltd., Appellant

Vs.

Commissioner of Central Excise & S.T., Noida Respondent

Appearance:

Shri Raj Kumar, Chartered Accountant for Appellant
Shri Gyanendra Kr Tripathi, Deputy Commissioner (AR), for Respondent

CORAM:

Hon'ble Smt. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 05/03/2019
Date of Decision : 05/03/2019

FINAL ORDER NOs-**70519-70520 / 2019**

Per: Anil G. Shakkarwar

Above stated two appeals are taken together for decision, since the issue involved in both of them are same and the period is different. Both the show cause notices put together, the period involved is March, 2011 to March, 2016. The appellant is providing 'Construction of Residential Complex Service'. The appellants were availing benefit of 75% abatement under Notification No.26/2012-ST dated 20.06.2012. It appeared to revenue that said abatement was not admissible for certain components of the consideration received by the appellant from the prospective purchaser of the properties and said components were on account of Prime Location Charges, Lease Rent and Transfer Charges. Therefore, proceedings were initiated through issuance of show cause notice for the period from March, 2011 to September, 2012 wherein by denying abatement for above stated components demand of around Rs.2.81 crores of Service Tax was raised against the appellant and for the subsequent period through another show cause notice a demand of Rs.1.70 crores was raised. Appellant agreed with the department that upto 30.06.2012 the abatement was not admissible and therefore, they paid Rs.1.70 crores. The above stated two show cause notices were adjudicated through separate Orders-in-Original where demands were confirmed through Order-in-Original dated 15.11.2017. The Original Authority has appropriated around Rs.1.70 crores paid by the appellant for the period prior to 30.06.2012. For the period subsequent to 01.07.2012 the appellant is aggrieved and before this Tribunal.

3. After hearing both the sides duly represented by learned Chartered Accountant Shri Raj Kumar on behalf

of appellant and learned A.R. Shri Gyanendra Kumar Singh, Deputy Commissioner on behalf of revenue, we note that the issue is no more res-integra and has been decided by this Tribunal in the case of M/s SJP Infracon Ltd. through Final Order No.72469/2018 dated 19.11.2018 wherein it was held as follows:-

> *"5. Having considered the rival contention and on perusal of record, we find that it is undisputed fact that the sale deed does not separately mention above stated charges and the sale deeds are for the amount of entire consideration including above stated charges. We, further, note that provisions under sub Section (3) of Section 66F has provided that whenever in ordinary course of business some service is naturally associated with a single service which gives essential character to the entire package of service then such naturally associated service is treated as bundled service and the said bundled service is to be treated as single service which gives the entire package its essential character. In the present case construction of residential complex service is the service which gives essential character to the package of the service and, therefore, the charges as stated above are essentially required to be bundled with the single service namely construction of residential complex service. We, therefore, do not find any merit in the stand taken by Revenue."*

4. By following the said decision of this Tribunal in the above stated case of M/s SJP Infracon Ltd., we hold that the impugned orders for the period from 01.07.2012 onwards are not sustainable.

5. We, therefore, set aside the impugned orders for the period 01.07.2012 and allow both the appeals.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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