CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70510 of 2022

(Arising out of Order-in-Appeal No.604-ST/APPL/LKO/2022 dated 02.09.2022 passed by Commissioner (Appeals) Customs, GST & Central Excise, Lucknow)

Shri Sunil Kumar, **.....Appellant**
(777, Alka Puri, Near Children Academy,
Etawah-206001)

VERSUS

Commissioner of Central Excise &
CGST, Agra **....Respondent**
(Agra, U.P.)

APPEARANCE:

Shri Kartikeya Narain, Advocate for the Appellant
Shri Santosh Kumar, Authorized Representative for the Respondent

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

FINAL ORDER NO.- 70883/2024

DATE OF HEARING : 06.12.2024
DATE OF DECISION : 06.12.2024

P.K. CHOUDHARY:

The present appeal is directed against the Order-in-Appeal No.604-ST/APPL/LKO/2022, dated 02.09.2022 passed by the Ld. Commissioner (Appeals), CGST & Central Excise, Lucknow.

2. Brief facts of the case are that during the period 2015-16 & 2016-17, the Appellant is a partner of the partnership firm in the name & style of M/s Ajab Singh & Sons, which was engaged in execution of road construction work for PWD. On the basis of information received from the Income Tax Department[1] i.e. Form 26-AS regarding receipts of amounts during the period under consideration, a Show Cause Notice[2] dated 28.04.2021 was issued alleging that the Appellant has suppressed the value of taxable services and service tax on the same has not been paid. The said SCN was adjudicated on *ex-parte* basis vide Order-in-Original No.87/ADC/ST/Agra/2021-22 dated: 30.03.2022, by which demand of Rs.76,27,377/- along with interest was confirmed and penalties were imposed under Sections 78,

[1] IT Department
[2] SCN

77(1)(a), 77(2), 77(1)(c) & 70 of the Finance Act, 1994. The said order was then upheld by the impugned order and aggrieved with the impugned order the present appeal has been preferred before the Tribunal.

3. Heard Sri Kartikeya Narain ld. Counsel for the Appellant and Sri Manish Raj, ld. Departmental Authorized Representative for the Revenue.

4. Ld. counsel for the Appellant has submitted that on being served with the impugned order, the Appellant made enquiries whereupon it was found that the PAN against which information was obtained from the I.T. Department was the PAN of the partnership firm and not the PAN of the Appellant. He further submitted that the partnership firm was only engaged in Road Construction Works, which activity was exempted from Service Tax by virtue of Serial No.13(a) of Notification No.25/2012-Service Tax dated 20.06.2012, as amended. He further submitted that for the period 2016-17, a second SCN was issued against the partnership firm on the same PAN by the Firozabad Division against which the firm filed reply along with the copies of contract and the payment certificates issued by the PWD and the said SCN was adjudicated vide Order-in-Original No.37/Demand/ST/AC-FZD/2022-23 dated 18.10.2022 dropping the proposed demand. He thus submitted that the present demand is not sustainable on merits.

5. Ld. Departmental Authorized Representative for the Revenue reiterated the findings recorded in the impugned order and supported the demand.

6. Heard both the sides and perused the appeal records.

7. We find that there is no dispute over the fact that the partnership firm executed Road Construction Work during the period under consideration, which activity was exempted from Service Tax vide Serial No.13(a) of Notification No.25/2012-Service Tax dated 20.06.2012, as amended, and therefore the demand is not sustainable in law. The Revenue has clearly not undertaken any enquiry before confirming the demand.

8. We further find that Form No.26AS is not a relevant document to determine the taxable turnover under the Service Tax provisions. Form 26-AS, at best, is only the document to show the receipts of an assessee and therefore it is for the Revenue to demonstrate that the receipts disclosed in Form 26-

AS is a consideration for provision of taxable services. However, this exercise has not been conducted in the present case and the demand has been confirmed based on figures of Form 26-AS on presumption basis.

9. Accordingly, in view of the above, we allow the appeal and set aside the impugned order with consequential relief to the Appellant in accordance with law.

(Operative part of the Order pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS