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

APPEAL No. ST/50718/2015-CU[DB]

(Arising out of Order-in-Appeal No.186/ST/APPL/NOIDA/2014 dated 07/10/2014 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Noida)

M/s Ahluwalia Contract (I) Ltd. **Appellant**

Vs.

Commissioner, Service Tax, Noida **Respondent**

Appearance:

Shri S. K. Agarwal (Advocate) for Appellant
Shri Sandeep Kumar Singh (Dy. Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 03/08/2018
Date of Decision : 03/08/2018

FINAL ORDER NO. - **71784/2018**

Per: Archana Wadhwa

As per the facts on record, the appellant is engaged in providing construction services to their client. For the said purpose, they received advance from the service recipient, which is called "Mobilization Charges".

2. Revenue entertained a view that such mobilization charges, being a part of the value of the services, are required to discharge service tax. Accordingly, proceedings were initiated against them resulting in passing of an order

by the Original Adjudicating Authority confirming the demand of Rs.42,26,430/- along with confirmation of interest and imposition of penalty of identical amount.

3. On appeal, Commissioner (Appeals) observed that the said mobilization charges were subsequently taken into account by the appellant and were included in the value of the services, on which the tax has already been paid by them. For verification of the said fact, he remanded the matter to the Lower Authorities. However, he did not agree with the appellant that such advances were to required pay the service tax along with the receipt of the main consideration and held that the same were required to discharge tax liability immediately on receipt. As such, interest liability would accrue against the assessee.

4. The appellant being aggrieved with the said finding of Commissioner (Appeals) has filed the present appeal.

5. Learned advocate appearing for the appellant has argued that Point of Taxation Rules were introduced with effect from 01/04/2011, laying down that as soon as the bill is issued the tax is required to be paid. Inasmuch as the period in the present appeal is prior to the said rule, there was no requirement to discharge the duty liability immediately on receipt of the mobilization charges thus

there is no requirement of confirmation of interest against the assessee. However, he submits that the earlier proceedings initiated against the appellant for the same period and for the same projects raising demand of Rs.15 crores approximately stands dealt with by the Tribunal and vide which Final Order No.ST/A/71745/2017-CU[DB] dated 28/08/2017 stand remanded for fresh consideration in the light of the Hon'ble Supreme Court decision in the case of L & T. He submits that inasmuch as in the present case also the Commissioner (Appeals) has remanded the matter for verification of the factual aspects, disputed legal issue can also be remanded for fresh consideration in the light of the earlier remanded matters.

6. Learned A.R. appearing for the Revenue has no objection.

7. In view of the above, we set aside the impugned order and remand the matter to the Commissioner for fresh decision along with earlier remanded matters. Appeal is thus allowed by way of remand.

(Dictated & Pronounced in Court)

Sd/-	**Sd/-**
(Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Lks