IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

ST/454/2012-CU[DB]

(Arising out of Order-in-Original No.22/COMMR/NOIDA/2011-2012 dated 23.01.2012 passed by Commissioner, Customs, Central Excise & Service Tax, Noida.)

M/s. Construction & Design Service

…APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & service Tax, Noida

RESPONDENT (S)

APPEARANCE

Shri G.K.Sarkar (Advocate) & Shri Prashant Srivastava (Advocate) for the Appellant (s)
Shri Mohd. Altaf (Asstt.Commr.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 18.07.2018

FINAL ORDER NO.71912/2012

Per ANIL G. SHAKKARWAR :

Present appeal is directed against Order-in-Original No.22/COMMR/NOIDA/2011-2012 dated 23.01.2012 passed by Commissioner, Customs, Central Excise & Service Tax, Noida.

2. Appellants are a wing of U.P. State Public Sector Undertaking by name U.P. Jal Nigam. They were entrusted with water supply and sewage management along with other functions. The appellants were awarded with work of laying of peripheral sewer line along with NOIDA-Greater NOIDA Express Highway as per the agreement entered into between the appellant

and NOIDA authority, a body under Govt. of Uttar Pradesh. The appellant were issued with a show cause notice dated 05.02.2009 raising a demand of Service Tax amounting to Rs.2.25 Lakhs covering a period form 2004-05 to 2007-08 for the activity undertaken by the appellant for NOIDA authority under the category of "Consulting Engineering Services" by invoking extended period of limitation. The said show cause notice was adjudicated and the demand was confirmed. The said demand was confirmed under the head "erection, commissioning and installation services". On 21.10.2010 appellants were issued with another show cause notice raising a demand of Service Tax of Rs.1.11 Crore under the head of "erection, commissioning, installation services" for the period from 2005-06 to 2009-10 for the same work or activity undertaken by the appellant for NOIDA authority. On contest the said show cause notice was adjudicated through the impugned order wherein the demand was confirmed and penalty was imposed. Aggrieved by the said order appellant is before this Tribunal.

3. Heard the ld.Counsel for the appellant. The ld.Counsel for appellant has submitted that earlier show cause notice dated 05.02.2009 was issued demanding Service Tax in terms of agreement entered into with NOIDA authority for laying of sewer line along NOIDA-Greater NOIDA Express Highway. Once again a show cause notice dated 21.10.2010 was issued for the period from 2005-06 to 2009-10 by invoking extended period of limitation on the basis of the same agreement which was basis for issue of show cause notice dated 05.02.2009. He has submitted that the show cause notice dated 21.10.2010 is not sustainable in view of the law laid down by Hon'ble Supreme Court of India in the case of Nizam Sugar Factory v. Collector of Central Excise, Andhra Pradesh reported at 2006 (197) E.L.T. 465 (S.C.).

4. Heard the ld.A.R., who has supported the impugned order.

5. Having considered the submissions and on perusal of record we find that the said agreement entered into between the appellant and NOIDA authority for laying down water and sewerage line along NOIDA-Greater NOIDA Express Highway was the basis for issue of show cause notice dated 05.02.2009 and show cause notice dated 21.10.2010 and the period involved in two said show cause notices respectively was 2004-05 to 2007-08 and 2005-06 to 2009-10. Therefore it is clear that on the same set of facts the show cause notice dated 21.10.2010 was issued invoking proviso for extended period. We find that as per the law laid down by Hon'ble Supreme Court in the case of Nizam Sugar Factory (supra), the show cause notice dated 21.10.2010 is not sustainable. In the result the impugned order is not sustainable. We therefore set aside the impugned order and allow the appeal.

(Operative part of the order was pronounced in the open Court.)

Sd/	SD/
(ARCHANA WADHWA)	**(ANIL G. SHAKKARWAR)**
MEMBER (JUDICIAL)	**MEMBER(TECHNICAL)**

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