IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I
ST/MISC/70203/2018 IN
APPEAL No.ST/70906/2016-CU[DB]

(Arising out of Order-in-Original No. 14/COMMR./ST/GZB/2015-16 dated 29/02/2016 passed by Commissioner of Central Excise & Service Tax, Ghaziabad)

M/s Envee Brothers **Appellant**

Vs.

Commissioner of Central Excise & S.T., Ghaziabad **Respondent**

Appearance:

Shri Kapil Vaish, Chartered Accountant, for Appellant
Shri Rajeev Ranjan, Additional Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 09/08/2018
Date of Decision : 09/08/2018

FINAL ORDER NO-**71978 / 2018**

Per: Archana Wadhwa

Vide his impugned order Commissioner has confirmed the demand of Rs.74,59,373/- along with imposition of penalties under various Acts, on the ground that the appellant has provided services of fabrication of Iron and Steel items to their principal contractor.

2. The said demand stands confirmed by rejecting the declaration filed by the appellant under Voluntary

Compliance Encouragement Scheme-2013 filed by the appellant declaring the Service Tax not paid by them during the relevant period from April, 2008 to March, 2013 to the extent of around Rs.15,11,402/-, which stands deposited by them.

3. Learned Chartered Accountant appearing for the appellant submits that in fact, there was no requirement to file said declaration under VCES, inasmuch as no tax liability would arise against them. He submits that admittedly the appellant, a sub-contractor was working under the principal contracts M/s Skyline Engineering Contracts India Pvt. Ltd. and others. He submits that in all cases their principal contractor has paid the service tax on full value of the contract and as such the demand of service tax could not be confirmed against them for the second time. However, he fairly agrees that the above contention was not raised before the Commissioner and as such the said fact is not verified by the lower authorities. He submits that the matter needs to be remanded as the appellant would be able to establish the factum of payment of service tax on full value of the contract by their principal contractor.

4. We find that the Tribunal in the case of M/s R.S. and Brothers vide Final Order No.71222/2018 dated 21.06.2018 has held that where the principal contractor, for whom the sub-contractor was working, has already discharged full tax

liability on the full value of the contract, no further liability would be fastened against the sub-contractor. To the same effect on the other decisions of the Tribunal. Reference can be made to the following Tribunal's decision:-

- M/s DNS Contractor Vs Commissioner of Central Excise, Delhi-I-2015 (37) S.T.R. 848 (Tri.-Del.)
- M/s BCC Developers and Promoters Pvt. Ltd. Vs Commissioner of Central Excise, Jaipur-2017 (52) S.T.R. 22 (Tri.-Del.)

However, we find that the plea that principal contractor has discharged the full tax liability, was not raised before the Original Adjudicating Authority and as such was not verified, we deem it fit to set aside the impugned order and remand the matter to Original Adjudicating Authority for verification of above factual aspects and to decide the assessee's duty liability based upon the outcome of the same.

5. Appeal is thus allowed by way of remand. Miscellaneous Application for additional evidence also gets disposed of.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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