IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No.ST/70910/2018-ST[SM]

(Arising out of Order-in-Appeal No. 188/ST/ALLD/2018 dated 26/03/2018 passed by Commissioner, CGST & Central Excise, Commissionerate (Appeals), Allahabad)

M/s Lotus Enterprises **Appellant**

Vs.

Commissioner Appeal, Central Excise & GST Dept., Allahabad

Respondent

Appearance:

Shri Rakesh Kumar (Advocate) for Appellant
Shri Mohd Altaf (Asstt. Commr.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing : 07/09/2018
Date of Decision : 07/09/2018

FINAL ORDER NO **72135 / 2018**

Per: Archana Wadhwa

After hearing both the sides I find that demand of Rs.1,69,145/- stands confirmed against the appellant as service tax under the category of 'Maintenance and Repair Services'. While confirming the demand Commissioner (Appeals) has not extended the benefit of Notification No.12/2003-ST dated 20.06.2003 to the appellant inasmuch as the composite contract entered into by the appellant with M/s Singrauli Super Thermal Power Station could not be produced by the appellant before the Appellate Authority. He also rejected the appellant's plea that the entire consideration should be treated as cum-duty and the benefit of the same should be extended to them. The said rejection is on the ground that the appellant had not taken the above plea before Original Adjudicating Authority and have not submitted invoices etc., issue by them.

2. As regards the first issue i.e., non-availability of Notification No.12/2003-ST. Learned Advocate appearing for the appellant admits the same and submits that the said finding of Commissioner (Appeals) is not being challenged by them. The only challenge is that service tax liability should be re-calculated by extending the benefit of cum-tax price.

3. I find in the Commissioner (Appeals) only ground for rejection of the assessee's said plea is that the issue was not contested before the Adjudicating Authority. However, the said issue being a legal issue can be raised at any point of time and the Appellate Authority should not have dismissed the same on the short ground of non-raising the same before Adjudicating Authority. As such I set aside the impugned order and remand the matter to Original Adjudicating Authority for re-calculation of the assessee's liability after extending the benefit of cum-tax price.

4. The appeal is disposed of in above manner.

(Dictated and pronounced in Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ankit