

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

ST/70871/2016-CU[DB]

(Arising out of Order-in-Appeal No.411-ST/APPL-ALLD/LKO/2016 dated 16.06.2016 passed by Commissioner(Appeals), Customs, Central Excise & Service Tax, Lucknow.)

M/s. Aditya Vishwakarma Contractor

...APPELLANT(S)

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Allahabad
RESPONDENT (S)

APPEARANCE

Shri Sita Ram, Consultant for the Appellant (s)
Shri Gyanendra Kumar Tripathi (A.C.) (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 : 04.12.2018

FINAL ORDER NO.72782/2018

Per Mrs.Archana Wadhwa :

As per facts on record the appellants entered into a contract with M/s.Obra Thermal Power Station for providing repair and maintenance services. As per the contract entered into between the two, all the terms of contract indicated the value of services and the value of the goods to be used in the said services. Accordingly the appellant discharged their Service Tax liability on the value of the services indicated in the said contracts.

2. Revenue, by entertaining a view that the appellant has not been able to give the exact value of the goods used in the said services and has not produced any evidence to that effect, the value of the goods cannot be

accepted and the value of the same cannot be excluded from the assessable value of the services in terms of Notification No.12/2003-ST dated 26.02.2003 initiated proceedings against the appellant. Accordingly demands were confirmed by alleging willful misstatement and suppression on their part and by invoking longer period of limitation.

3. The Id.Advocate appearing on behalf of the appellant fairly agrees that the value of the goods were not separately shown by them either in the contract or in the Bills so raised, but assails the impugned order on the point of limitation by submitting that the period involved in all the appeals is from 2006/07 to 2010/11 and the show cause notice stands issued on 04.10.2011. He submits that that the services were being provided to a Public Sector Undertaking under a contract and inasmuch as the said contract bifurcated the value of the services as also the value of the goods to be used in the said services, on percentage basis, they adopted the assessable value of the services in terms of the contract only and paid duty accordingly. In such circumstances there can be no mala fide on their part. However, he agrees to pay the Service Tax falling within the limitation period inasmuch as they have no evidence to establish the value of the goods.

4. After hearing the Id.AR we find that admittedly the demands stand confirmed by invoking the longer period. The appellant were duly registered with the department and were filing the ST-3 returns by showing payment of Service Tax on the value of the services as indicated in the contracts entered by them with the said Public Sector Undertaking. In such a scenario we are of the view that the appellant was entertaining a bona fide belief and there was no mala fide on their part so as to justifiably invoke the longer period of limitation. Accordingly we hold that extended period is not available to the Revenue. However, as a part of demand falls within the limitation period we

direct the adjudicating authority to re-quantify the demands against all the appellants for which purpose, the matter is remanded to him.

5. As we have already concluded that there was no mala fide on the part of the assesses we find no reasons to uphold the penalties imposed upon them. Accordingly, the same are set aside.

Appeal is disposed of in above manner.

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

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

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