

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

APPEAL No.ST/70321/2017-CU[DB]

(Arising out of Order-in-Original No. AGA-EXCUS-000-COM-0030-16-17 dated 23/12/2016 passed by Commissioner of Customs, Central Excise & Service Tax, Agra)

M/s Manhar Infrahomes Pvt. Ltd.

Appellant

Vs.

Commissioner of Customs, C.E. & S.T., Agra

Respondent

Appearance:

Shri Dharmendra Srivastava, Chartered Accountant

for Appellant

Shri Sandeep Kumar Singh, Deputy Commissioner (AR),

for Respondent

CORAM:

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

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 05/12/2018

Date of Decision : 05/12/2018

FINAL ORDER NO-72814 / 2018

Per: Archana Wadhwa

After hearing both the sides, we find that service tax to the tune of Rs.83 lakhs approximately stands confirmed against the appellant, on the allegations that during the period relevant for the purposes of the present appeal, they have provided services falling under the category of 'Construction of Residential Complex Service, and had not discharged their tax liability.

2. Learned Advocate appearing for the appellant submits that they are not disputing the fact that during the period in question, they had provided the taxable services without discharging their service tax liability. However, he submits

that the revenue has picked up the figures from the various documents including their balance sheet etc. for the purpose of determining the value of the said services. However, in one case, though the consideration for the service to be provided was received by the appellant but the same was subsequently refunded and no service was actually provided. As such, no service tax would be payable on the said amount. He, however, fairly agrees that the said issue was not raised before the Original Adjudicating Authority and as such there is no verification or examination of the said plea of the assessee.

3. In view of the above, we set aside the impugned order and remand the matter to Commissioner for dealing with the said contention of the appellant, for which purpose an opportunity would be afforded to them.

4. We make it clear that the appellant is neither contesting the demand of service tax or imposition of penalty and the only dispute is as regards quantification of the demand, in view of the above stand of the appellant.

4. The appeal is thus allowed by way of remand.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)