

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

APPEAL No.ST/70495/2017-CU[DB]

(Arising out of Order-in-Appeal No. 101-ST/APPL/KP/2017 dated 17/04/2017 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

Commissioner of Central Excise & S.T., Kanpur

Appellant

Vs.

Shri Kripa Shanker Yadav,

Respondent

Appearance:

Shri Shiv Pratap Singh, Deputy Commissioner (AR)
Absent,

for Appellant
for Respondent

CORAM:

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

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

Date of Hearing : 06/12/2018
Date of Decision : 06/12/2018

FINAL ORDER NO-72828/2018

Per: Archana Wadhwa

Being aggrieved with the order passed by Commissioner (Appeals), revenue has filed the present appeal. We have heard the learned A.R. for revenue, no body appeared for revenue.

2. On going through the facts on record we note that the respondent was registered with the Service Tax Department for providing taxable services covered under Works Contract

Service. During the course of investigation, it was found that the appellant has rendered services to IIT, Kanpur CPWD for the period October, 2009 to March, 2014. The Department was of the view that the services of appellant are classifiable under "Works Contract Services" and subject to service tax. However, the appellant has claimed that their activities are not for purpose of commerce and industry and are out of purview of tax for the period till 30.06.2012 and are exempted from service tax by virtue to Mega Exemption Notification No.25/2012-ST dated 20.06.2012 for the period w.e.f. 01.07.2012. Accordingly, show cause notice dated 23.04.2015 was issued to the respondent demanding service tax amounting to Rs.42,41,075/- alongwith interest and imposition of penalty under Section 77 & 78 of the Finance Act, 1994. The adjudicating authority vide Order-in-Original dated 29.08.2016 has confirmed the demand of Rs.42,41,075/- alongwith interest and imposed penalty equal to confirmed demand under Section 78 and have also imposed a penalty of Rs.10,000/- each under Section 77(1) (b), 77(1) (c) & 77 (2) of the Finance Act, 1944. Aggrieved by the said order of the Commissioner, respondent has filed appeal before the Commissioner (Appeals).

3. The Appellate Authority relying on Circular No.80/10/2004-TRU dated 17.09.2004 has observed that from the definition of work contract, it is very much clear that

completion and finishing services, repair, alternation, renovation or restoration of, or similar services, in relation to construction of a new building or a civil structure or a part thereof, or of pipeline or conduit, primarily for the purposes of commerce or industry is within the purpose of tax. In other words, completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to a new building of civil structure or a part thereof which is not primarily for the purpose of commerce or industry is not subject to service tax. The Appellate Authority has further held that primary purpose of IIT, Kanpur and CPWD is not for commerce and industry. Therefore, the contracts executed by the respondent for IIT and CPWD do not fall under the purview of Section 65 (105) (zzzza) of the Finance Act, 1994 for the period upto 30.06.2012.

4. Further, as regards demand for the period from 01.07.2012 relating to IIT, the Appellate Authority has held that it is undisputed that the IIT, Patna whose academic block was to be constructed by the party was set up by an Act of Parliament i.e. Indian Institute of Technology Act, 1961 as an Institute of national importance under Article 248 of the Constitution of India. As per the definition of government authority as amended on 30th January, 2014, an authority or board or any other body set up by an Act of Parliament or State Legislature is a government authority. Therefore, he has

held that No.25/2012-ST dated 20.06.2012 exempts the activity of construction undertaken by the party from payment of service tax. As regards to work done relating to CPWD the Appellate Authority has held that CPWD is a Central Government owned authority in charge of public sector works hence, it is covered within the definition of term 'government'. After going through the work orders, he has further held that work executed by the party for IIT, Kanpur and CPWD are in the nature of repair, maintenance, renovation or alternation of a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession, hence exempted from service tax under entry no.12 (a) of the No.25/2012-ST dated 20.06.2012. Accordingly, the appellate authority has allowed the appeal of the party.

Hence the present appeal by the Revenue.

5. We find that for arriving at the above findings, the Commissioner (Appeals) has relied upon the Board's Circular as also Hon'ble Patna High Court's decision in the case of M/s Shapoorji Paloonji & Company (P) Ltd. Vs Commissioner of Customs, Central Excise & Service Tax 2016-TIOL-556-HC-PATNA-ST. The revenue in their memo of appeal, nowhere contested the applicability of the said decision. Otherwise also, we find that Board Circular supports the assessee's case and it is well settled law that revenue cannot go against the

Board Circular. As such, we find no justification to interfere in the impugned order of Commissioner (Appeals).

6. Revenue's appeal is accordingly rejected.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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