

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

**APPEAL No. ST/52043/2015-CU[DB]**

(Arising out of Order-in-Appeal No.01/ST/ALLD/2015 dated 20/01/2015 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Allahabad)

**Commissioner of Central Excise**

**& Service Tax, Allahabad**

**Appellant**

Vs.

**M/s M. P. Agrawal**

**Respondent**

Appearance:

Shri Sandeep Kumar Singh (Dy. Commr.) AR &

Shri Mohd. Altaf (Asstt. Commr.) AR

Absent

for Appellant  
for Respondent

**CORAM:**

**Hon'ble Mrs. 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. - 72837/2018**

**Per: Archana Wadhwa**

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. We have heard learned A.R. appearing for the Revenue and nobody appeared for the respondent.

2. As per facts on record, during the period 2006-07 to 2010-11, the respondent was registered with the Service

Tax Department for providing various services including Management, Maintenance & Repairs Services and “Commercial or Industrial Construction Services” being provided by them to M/s Obra Thermal Power Station Obra. They were providing said services under agreement executed by them with the above Obra Thermal Power Station from time to time and were discharging their service tax liabilities on the same.

3. Revenue procured the figures of total payment made by M/s Obra Thermal Power Station by the respondent during the period 2006-07 to 2010-11 and entertained a view that the said considerations made by M/s Obra Thermal Power Station was on account of various services provided by the respondent. Inasmuch as the respondent had not reflected the said consideration in their service tax returns, they have short paid service tax to the tune of Rs.38,23,591/-.

4. Accordingly proceedings were initiated against them by way of issuance of a show cause notice dated 05/10/2011 alleging short payment of service tax and proposing to confirm the same. The respondent in their submission, submitted that apart from providing services to the said M/s Obra Thermal Power Station which were

taxable, they were also providing some exempted services to them alongwith supply of certain goods also. They submitted that the receipt of the amount from M/s Obra Thermal Power Station cannot be said to be solely on account of providing taxable services and no short payment of duty can be alleged solely on the basis of the said payment made by them.

5. The Original Adjudicating Authority did not find favour with the above plea of the assessee and accordingly confirmed the demand alongwith confirmation of interest and imposition of penalty. On appeal against the said order of the Original Adjudicating Authority, Commissioner (Appeals), while disposing of the appeal, examined the various documents on record and observed that the liability has been fixed against the assessee on the basis of payment made by the service receiver. He took into consideration the list of non taxable/exempted services provided by respondent which included non taxable/exempted services of construction of road, cleaning of wild vegetation, shrubs, slush etc. and its disposal; civil foundation work in Rail track; transportation of steel from Kanpur, Allahabad and Ghaziabad, supply of stone blast and 1.5 Air Conditioner as also the final payment for the work order executed

earlier and refund of security. He sought verification of those receipts from Jurisdictional Divisional Officer by number of letters requiring him to verify the contracts filed by the assessee. Concerned Officer did not respond to the correspondence of Commissioner (Appeals). Accordingly, he proceeded to examine each and every document himself and held that inasmuch as number of activities were non taxable activities, the entire consideration received by the assessee from M/s Obra Thermal Power Station cannot be held to be on account of providing taxable services. He also took into consideration a chart duly certified by Chartered Accountant giving the details of various contracts and nature of contracts alongwith a certificate obtained from Trade Tax Authority certifying the tax deposited by the respondent. He also took into consideration the abatement available to the respondents in terms of Notification No.01/2006-ST and held that material has also been supplied by the respondents. Commissioner (Appeals) further held that as per settled law the show cause notice has to be specific and in the absence of any classification of the services, arrived at by the Revenue, demand cannot be confirmed against them. Accordingly he set aside the demand except to the extent of

Rs.6,214/-, with which the appellant is not aggrieved with.

6. We find that the entire case of the Revenue is based upon the payment made by Obra Thermal Power Station, without actually finding out as to whether the said payments are against any taxable services or are against the exempted services, as contended by the assessee. There is no category of services disclosed in the show cause notice. Merely because the respondents have received certain payments from the said M/s Obra Thermal Power Station does not lead to the inevitable conclusion that the said consideration was on account of taxable services having been provided by the assessee. There is no evidence for the same, in the absence of which, the demand should not have been upheld against them. As such, we are of the view that impugned order of Commissioner (Appeals) does not require any interference. As such the Revenue's appeal is rejected.

(Pronounced in Court)

**Sd/-**  
**(Anil G. Shakkarwar)**  
**Member (Technical)**

**Sd/-**  
**(Archana Wadhwa)**  
**Member (Judicial)**

*Lks*