

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No. ST/70268/2017-CU[DB]**

(Arising out of Order-in-Appeal No. 402-ST/APPL-ALLD/LKO/2016 dated 15/06/2016 passed by Commissioner, Customs, Central Excise & Service Tax (Appeals), Allahabad)

M/s Modern Engg Works

Appellant

Vs.

Commissioner of Central Excise, Service Tax, Allahabad

Respondent

Appearance:

Absent On Call

for Appellant

Shri Gyanendra Kumar Tripathi (AC) AR

for Respondent

CORAM:

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

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

Date of Hearing : 16/11/2018
Date of Pronouncement : 12/12/2018

FINAL ORDER NO **72845 / 2018**

Per: Anil G. Shakkarwar

When the appeal was called for hearing nobody was present on behalf of the appellant neither there was any representation for adjournment. We have heard learned AR on behalf of the Revenue and perused the record. On perusal of record we find that the appellant is registered with Service Tax Department and filing the returns and paying service tax. We have noticed from the show cause notice dated 05.10.2011 that on the basis of information obtained from M/s Obra Thermal Power Station, Revenue compared the amount received by the appellant and the amount reflected in the returns filed and on the said basis of difference in the value for which service tax was paid and the amount received from M/s Obra Thermal Power

Station, Revenue entertained a view that service tax was evaded on the differential value. Revenue attempted to seek clarification from the appellant but without waiting for receipt of clarification from the appellant presumed that the appellant had evaded service tax of Rs.1,26,707/- and issued a show cause notice which culminated into filing of present appeal.

2. We note that the said show cause notice is not sustainable because it was a presumptive show cause notice wherein the difference between the value on which service tax was paid and the amount received from M/s Obra Thermal Power Station was presumed to be the said amount which did not suffer service tax without examining whether the said amount was received for what purpose, whether the said purpose was covered by definition of any service, whether any abatement was available to arrive at the assessable value for the service if any rendered and whether any exemption was available to the appellant. We, therefore, do not find the said show cause notice to be sustainable.

3. In view of the above discussion, we set aside the impugned order and allow the appeal.

(Pronounced in Court on **12.12.2018**)

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

Sd/-
(Archana Wadhwa)
Member (Judicial)