

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

*APPEAL No. ST/70165/2016-CU[DB]*

(Arising out of Order-in-Appeal No. 57/ST/ALLD/2015 dated 16/04/2015 passed by Commissioner, Customs, Central Excise & Service Tax (Appeals), Allahabad)

**M/s Neha Air Conditioning** **Appellant**

Vs.

**The Commissioner, Central Excise &  
Service Tax, Allahabad** **Respondent**

*APPEAL No. ST/70315/2016-CU[DB]*

(Arising out of Order-in-Appeal No. 217/ST/ALLD/2015 dated 23/11/2015 passed by Commissioner, Customs, Central Excise & Service Tax (Appeals), Allahabad)

**M/s Bharat Techno Engineering** **Appellant**

Vs.

**Commissioner, Central Excise &  
Service Tax, Allahabad** **Respondent**

Appearance:

Absent On Call for Appellant(s)  
Shri Gyanendra Kumar Tripathi (AC) AR for Respondent(s)

**CORAM:**

**Hon'ble Mrs. Archana Wadhwa, Member (Judicial)**  
**Hon'ble Mr. Anil G. Shakkwarwar, Member (Technical)**

Date of Hearing : 10/12/2018  
Date of Decision : 10/12/2018

FINAL ORDER NOs **72859-72860 / 2018**

**Per: Archana Wadhwa**

When the appeals were called, nobody was present on behalf of the appellant neither there was any representation

for adjournment. Accordingly, we have heard learned AR on behalf of the Revenue and gone through the records.

2. On perusal of records we find that the appellants are registered with Service Tax Department under the category of "Maintenance & Repair Services" and filing the returns and paying service tax. We have noticed from the show cause notice issued to the appellants 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. Accordingly demands stands raised and confirmed against the appellants to the extent of Rs.4,77,026/- in the appeal of M/s Neha Air Conditioning and Rs.4,79,790/- in respect of M/s Bharat Techno Engineering, respectively, along with imposition of penalties.

2. We find that an identical dispute stands considered by this Bench in the decisions in the case of M/s Modern Engg Works vide its Final Order No. 72845/2018, it was observed as under:-

*"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.”*

3. Inasmuch as the issue stands decided, we set aside the impugned orders and allow the appeals with consequential relief to the appellants.

(Pronounced in Court)

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

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