

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

APPEAL No. ST/70022/2015-CU[DB]

(Arising out of Order-in-Appeal No. 102/ST/ALLD/2015 dated 28/05/2015 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Allahabad)

M/s Janardan Rai Contractor

Appellant

Vs.

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

Appearance:

Shri 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 : 11/12/2018

Date of Decision : 11/12/2018

FINAL ORDER NO 70040 / 2019

Per: Archana Wadhwa

When the appeal was 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 appellant is 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 appellant 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 appellant to the extent of Rs.7,75,050/- 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 order and allow the appeal with consequential relief to the appellant.

(Pronounced in Court)

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

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ankit