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

APPEAL No.ST/70128/2017-CU[DB]

(Arising out of Order-in-Appeal No.739-ST/APPL-ALLD/LKO/2016 dated 22/11/2016 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Lucknow)

M/s Dhruv Construction Company **Appellant**

Vs.

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

Appearance:

Shri Sita Ram (Consultant) for Appellant
Shri Mohd. Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing/ Decision : 10/01/2019

FINAL ORDER NO.**70094 / 2019**

Per: Anil G. Shakkarwar,

After hearing both the sides duly represented by learned consultant, Shri Sita Ram for the appellant and learned A.R. Shri Mohammad Altaf on behalf of Revenue, we note that appellant were providing services to M/s IFFCO, Allahabad and proceedings were initiated against the appellant by Original Authority confirming the demand of Service Tax of Rs.37,46,274/- with equal penalty and other penalties for violation of failure to file ST Returns. The learned Commissioner (Appeals) on filing appeal before him reduced assessable value and sustained service tax liability on the appellant to the tune of Rs. 37,17,813/- and penalty to the extent of 25% of the said amount under Section 78 of the Finance Act, 1994. The appellant has contended that the Lower Authorities have not allowed them benefit of cum-duty value on value for confirmation of said service tax. On perusal of record, we note that cum-duty benefit was not allowed to the appellant and we also note that there is no evidence in the proceedings that appellant have separately charged service tax. We, therefore, remand the matter to Original Authority to allow cum-duty benefit and recalculate service tax payable by the appellant and reduce penalty accordingly to 25% of such service tax payable by the appellant.

2. In above terms appeal is allowed in part.

(Pronounced & Dictated in Court)

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

Sd/-
(Archana Wadhwa)
Member (Judicial)

Nihal