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

APPEAL No. ST/70817/2016-CU[DB] With ST/CROSS/70257/2017

(Arising out of Order-in-Appeal No. 301-ST/APPL-LKO/LKO/2016 dated 13/04/2017 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

Commissioner of Central Excise & Service Tax, Lucknow — **Appellant**

Vs.

M/s Wonder Point — **Respondent**

Appearance:

Shri Rajeev Ranjan, Joint Commissioner (AR), for Appellant
Absent on Call, for Respondent

CORAM:

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

Date of Hearing : 10/12/2018
Date of Decision : 28/01/2019

FINAL ORDER NO. **70139/2019**

Per: Archana Wadhwa

Being aggrieved with the order passed by Commissioner (Appeals), Revenue has filed the present appeal. We have heard Shri Rajeev Ranjan, Joint Commissioner appearing on behalf of the Revenue. Nobody appeared on behalf of the respondents.

2. As per facts on record M/s Wonder Points, Lucknow, a proprietorship firm, is engaged in providing services under

category of ‘Business Auxiliary Service’. ‘Information Technology Software Service’ & ‘Maintenance or Repair Service’. On demand Sri Nikhil Misra – Proprietor submitted their Audit Report, Balance Sheet, details of billing to various parties for the F.Y. 2008-09 to 2011-12, Income tax returns and sample copies of Form 16A and invoices for the corresponding period. Scrutiny of documents submitted by the appellant indicated that the appellant were engaged in the activity of ICR Form scanning and Processing. Designing and processing of admit cards/verification cards/roll sheets etc. for various Universities etc. these activities amounted to processing of transactions in relation to procedure of admissions, conduct of examinations and result tabulation etc. on behalf of customers. They were also engaged in other transaction processing viz. data processing and ICR Scanning for their customers. The ‘confidential job’ or ‘contract work’ etc. mentioned by their clients was nothing but various activities, as mentioned above, undertaken by them for their clients. They are also engaged in similar work on sub-contract for other firm viz. M/s Management Control Systems, Lucknow & M/s Management Control Systems Pvt. Ltd. Lucknow. Sri Nikhil Misra in his statement dated 01.10.2013 stated before the officers that the nature of work given to them was printing of documents viz. OMR Sheets, ICR Sheets, Mark Sheets which include incidental activities of scanning, paper setting, aligning etc. on computer system. However, they have never received any separate payment for such incidental activities. The department alleged that the appellant had not paid service tax of Rs.21,39,965/- on the consideration received by them for providing taxable service of 'Business Support Service' during the period 2008-09 to 2011-12.

3. Accordingly, a Show Cause Notice was issued for demand of aforesaid amount of Service Tax along with interest under provisions of Section 73(1) & 75 respectively. Penalty under Section 78, 77(1)(a), 76 and late fee under Section 70 read with Rule 7C of STR 1994 was also proposed. On adjudication, the Adjudicating Authority confirmed the demand alongwith interest and imposed equal amount of penalty. He also imposed penalty for late submission of ST-3s during 2007-08.

4. Feeling aggrieved, the party filed the impugned appeal before Commissioner (Appeals), Central Excise, Lucknow.

5. The Commissioner (Appeals), Central Excise, Lucknow, vide O-I-A No. 301-ST/APPL-LKO/LKO/2016 dated 13.04.2016, disposed of the appeal by way of setting aside the Order-in-Original no. 18/ADC/LKO/ST/2015-16 dated 06.08.2015 passed by the Additional Commissioner, Central Excise, Lucknow, wherein, he *inter-alia* observed that on perusal of documents (Bills, work order, certificate, etc.), it has been found that the appellant has produced number of documentary evidence clearly showing that the work

undertaken by the appellant was printing of aforesaid stationery for use by their clients – Universities/Institutions/Exam Councils which is not covered by the above definition of the alleged category of taxable service i.e. 'BSS'. In absence of any contrary documentary evidence to support the allegation of the department, he agreed with the contention of the party and therefore, held that the work undertaken by the appellant during the relevant period is printing of stationery for Universities/Institutions/Exam Councils directly or through M/s Management Control Systems on job work basis.

6. The ld. Commissioner (Appeals), further observed that the appellant has claimed that the said activity of printing is exempt in terms of Notification No.14/2004-ST dated 10.09.2004. He held that from the above said notification, it is clear that any Business Auxiliary Service in respect of any activity relating to printing provided on behalf of the client is exempted and therefore, he concluded that the impugned service of printing of exam stationery, etc. for Universities/Institutions/Exam Councils either directly or sub-contracted through M/s MGM is exempt from Service Tax under Notification No.14/2004-ST (supra). Accordingly he set aside the impugned order confirming demand of Service Tax against the appellant, interest and penalties imposed upon are also set aside, accordingly.

7. Hence, the present appeal by the Revenue.

8. Ongoing through the impugned order, we find that the Appellate Authority has examined all the evidences placed before him and have come to a finding that the appellants were awarded the work order for supply of (or printing of) printed mark-sheet, tabulation chart, admit cards, verification cards, etc. by various Universities or Institutions directly or some contracted, such works through private firms. The assessee had also submitted confirmation letter of Universities stating that they had done printing work in the period of dispute and some work orders containing details of nature of work order done and document for making payments also stand scrutinized by him. Accordingly, he has observed as under:-

> "I find from the Order-in-Original itself that documents viz. Bills, Balance Sheets, ITR, Form-16A, CA's Certificate, etc. were also submitted before the Department/Adjudicating Authority with defence reply to notice but the Adjudicating Authority did not pay heed to their submission and abruptly concluded that the appellant were providing Business Support Service to their clients. I find that from perusal of Profit & Loss Account, ITR, etc. it cannot be concluded rather the Bills, Work Orders, etc. produced by them clearly show that such work was awarded by Universities, Professional Exam Council, etc. who are Public Educational Institutions and not doing any commercial activities for Business or Commerce. Consequently, the appellant can also not be alleged for supporting any business activity of their clients. As regards work done for private firm M/s MCM, I find that such printing

work of Universities, Exam Council, etc. was sub-contracted to them through M/s MCM. Thus, the conclusion of the Adjudicating Authority that the appellant were providing Business Support Service to these clients is unfounded and lacks support from documentary evidence.

From perusal of the documents (Bills, Work Order, Certificate, etc.), I find that the appellant has produced number of documentary evidence as mentioned above clearly showing that he work undertaken by the appellant was printing of aforesaid stationery for use by their clients – Universities/Institutions/Exam Councils directly or through M/s Management Control Systems on job work basis. The appellant has claimed that the said activity of printing is exempt in terms of Notification No.14/2004-ST dated 10.09.2004."

9. Reading of the above reasoning, adopted by Commissioner (Appeals), does not show any infirmity in the impugned order. Revenue has not been able to adduce any evidence to the contrary. As such, we find no reasons to interfere in the impugned order of Commissioner (Appeals). Revenue's appeal is accordingly rejected. C.O. also disposed of.

(Pronounced in open Court on 28/01/2019)

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

Ansari