IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

ST/CROSS/70368/2018, ST/CROSS/70523/2018,
ST/CROSS/70537/2018
ST/STAY/70231/2018

&

ST/70618/2018-CU[DB], ST/70668/2018-CU[DB]

(Arising out of Order-in-Appeal No.71 to 72/ST/ALLD/2018 dated 08.02.2018 passed by Commissioner(Appeals), CGST & Central Excise, Allahabad.)

Commissioner of Central Excise & Service Tax, Kanpur
…APPELLANT(S)

VERSUS

Executive Engineer

RESPONDENT (S)

APPEARANCE

Shri Rajeev Ranjan (Addl.Commr.) (A.R.) & Shri Gyanendra Kumar Tripathi(Dy.Commr.) (A.R.) for the Revenue

Shri Amit Kumar Prasad (Advocate) for the Respondent

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

DATE OF HEARING/DATE OF DECISION : 28.01.2019

FINAL ORDER NO.70160-70161/2019

Per Mrs.Archana Wadhwa :

After rejecting the stay application filed by the Revenue praying for staying the operation of the impugned order of Commissioner(Appeals), we proceed to decide the present two appeals. As both the appeals are directed against the same impugned order passed by Commissioner(Appeals), we proceed to decide both the appeals by a common order.

2. After hearing both sides duly represented by Shri Rajeev Ranjan, learned Addl.Commr.(A.R.) along with Shri Gyanendra Kumar Tripathi, learned Dy.Commr.(A.R.) for the Revenue and Shri Amit Kumar Prasad, learned Advocate for the respondent, we find that the respondents were engaged in providing 'works contract services' to various departments of Govt. of Uttar Pradesh in terms of the contract entered between the two. The services provided by the respondent to the Govt. departments were exempt in terms of the Entry No.12 of Notification No.25/2012-ST dated 20.06.2012. However, subsequently vide Notification No.06/2015-ST dated 01.03.2015, effective from 01.04.2015 such mega exemption was omitted and the services provided to the govt. authorities became taxable. Accordingly the respondents started paying Service Tax. Subsequently the said exemption was again restored vide Notification No.09/2016-ST dated 01.03.2016, by inserting entry 12A in the mega Notification.

3. Further section 112 was inserted in the Act, vide the Finance Act, 2016, which provide as under:-

> *"<u>Section 102</u> : (1) Notwithstanding anything contained in section 66B, no service tax shall be levied or collected during the period commencing from the 1st day of April, 2015 and ending with the 29th day of February, 2016 (both days inclusive), in respect of taxable services provided to the Government, a local authority or a Governmental authority, by way of construction, erection, commissioning, installation,*

completion, fitting out, repair, maintenance, renovation or alteration of-

(a) a civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession;

(b) a structure meant predominantly for use as –

(i) an educational establishment;

(ii) a clinical establishment; or

(iii) an art or cultural establishment;

(c) a residential complex predominantly meant for self-use or for the use of their employees or other persons specified in Explanation 1 to clause (44) of section 65B of the said Act,

under a contract entered into before the 1st day of March, 2015 and on which appropriate stamp duty, where applicable, had been paid before that date.

(2) Refund shall be made of all such service tax which has been collected but which would not have been so collected had sub-section (1) been in force at all the material times.

(3) Notwithstanding anything contained in this Chapter, an application for the claim of refund of service tax shall be made within a period of six months from the date on which the Finance Bill, 2016 receives the assent of the President."

In terms of said section 112 of the Finance Act respondents applied for the refunds under section 11B of the Central Excise Act, 1944 as made applicable to the Service Tax matters vide section 83 of the Finance Act. The said refund claims so filed by the respondent was rejected by the Deputy Commissioner by observing that they failed to produce documentary evidences to show that they had not passed on the incidence of Service Tax. The show cause notices issued to the respondents were accordingly resulted in passing of order of rejection of such refund claim.

4. On appeal against the said orders, Commissioner(Appeals) scrutinized all the documents and found that the observations of the original adjudicating authority that the assessee had not filed any documents/invoices to show that the Service Tax paid by them related to the services specified in entry 12A of the mega exemption Notification are not proper inasmuch as there were all the documents to show that the services provided by them were covered by the said entry. As regards unjust enrichment angle he observed as under:-

> *"3.4 Further, it is observed that for executing these work orders, the appellants did not raise any bill/invoice on the concerned department of the Government of Uttar Pradesh and on the basis of their estimates provided to the Government of Uttar Pradesh for such works, they had received the funds from the Government of Uttar Pradesh. Since prior to 01.04.2015, Service Tax on such work orders, was exempt under Sl.No.(a), (c) & (f) of the entry 12 of the Mega Exemption, the funds received by them during 2015-16 did not include the Service Tax element. Since such work orders had become taxable during 01.04.2015 to 29.02.2016, they paid the Service Tax out of these funds allotted by the Government of Uttar Pradesh which did not include the Service Tax element."*

5. As is seen from the above findings of Commissioner(Appeals), he has observed that the contracts with the Government were executed when the services were exempted in terms of various Sl.Nos. of Entry 12 of the Mega Notification. Admittedly in such a scenario the question of inclusion of any tax in the contract value would not arise. He has

further observed that the assessee was not raising any Bills for the work executed by them and only the contract amounts were being paid to them. We find no infirmity in the above findings of Commissioner(Appeals) and hence no merits in the Revenue's appeals. We also note that when the legislation itself has legislated for the refund of Service Tax in terms of the provisions of section 102, the objections raised by Revenue cannot be appreciated.

6. In view of the foregoing, we find no merits in the Revenue's appeals. The same are accordingly rejected. Stay Petition as also the Cross Objections filed by the respondents also get disposed of.

(Dictated and pronounced in the open Court.)

SD/	SD/
(ANIL G. SHAKKARWAR)	**(ARCHANA WADHWA)**
MEMBER(TECHNICAL)	**MEMBER (JUDICIAL)**

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