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

APPEAL No. ST/53144/2014-CU[DB]

(Arising out of Order-in-Original No.28/Commr./LKO/ST/2013-14 dated 24/02/2014 passed by Commissioner of Customs, Central Excise & Service Tax, Lucknow)

M/s Maisur Construction Co. Pvt. Ltd. **Appellant**

Vs.

Commissioner of Customs, Central Excise

& Service Tax, Lucknow **Respondent**

Appearance:

Shri Dharmendra Srivastava (C.A.) for Appellant
Shri Pawan Kumar Singh (Supdt.) AR for Respondent

CORAM:

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

Date of Hearing : 15/02/2019
Date of Decision : 15/02/2019

FINAL ORDER NO. - 70294/2019

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by Shri Dharmendra Srivastava learned Chartered Accountant appearing for the appellant and Shri Pawan Kumar Singh learned A.R. for Revenue, we note that through the impugned order service tax under the category of 'Commercial & Industrial Construction

Service' was confirmed. Further service tax under 'Business Auxiliary Service' was also confirmed. The contention of the appellant is that 'Business Auxiliary Service' was admitted by them to the tune of Rs.14 lakhs paid alongwith interest before issuance of show cause notice and therefore as provided under Sub-section (3) of Section 73 of Finance Act 1994 show cause notice should not have been issued in respect of the same. Further he has submitted that the balance of service tax demanded was though confirmed under 'Commercial & Industrial Construction Service' the activity was related to 'Works Contract Service'. He has further submitted that the said plea was taken before the Original Authority. However, Original Authority did not find favour with the same. He has further relied on Final Order No.70559/2017 dated 05/06/2017 issued by this Tribunal in the case of Gambhir Construction Company vs. Commissioner of Central Excise & Service Tax, Lucknow. The learned Chartered Accountant on behalf of the appellant has submitted that this Tribunal held that in view of various documents produced before the Court, it was established that the construction work was alongwith material and it was also held in the said case that contractee had deducted VAT on the material components at source and issued tax deduction certificate under said VAT Act. It was further held in the said case that in the said case the service was not classifiable under ‘Commercial & Industrial Construction Service’. Learned consultant has submitted that the said case law is squarely applicable in the present case. On the contrary learned A.R. on behalf of Revenue has submitted that there is no sufficient material available on record to establish with the present case contract was alongwith materials. On careful verification of the facts on record, we note that though there is mention about the deduction of VAT at source still there is no record available that the entire contract was to be executed alongwith material. We, therefore, are of the opinion that in so far as the confirmation of service tax under ‘Commercial & Industrial Service’ is concerned, the matter needs to be re-verified at the level of Original Authority who shall take into consideration the facts of the case and provisions of law and the said Final Order of this Tribunal in the case of Gambhir Construction Company and also the law declared by Hon’ble Supreme Court in the case of Commissioner of Central Excise, Kerala vs. Larsen & Toubro Ltd. reported at 2015-TIOL-187-SC-ST. In so far as the imposition of penalty under Section 78 of Finance Act, 1994 equal to the amount of service tax of 'Business Auxiliary Service' the same is set aside. The appellant shall not raise the issue related to 'Business Auxiliary Service' in the proceedings before the Original Authority. In above terms by partially setting aside the impugned order, we remand the matter to Original Authority in terms of above direction. The appellant shall produce a copy of said Final Order in the case of Gambhir Construction Company before the Original Authority.

(Dictated & Pronounced in Court)

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

Lks