IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No. ST/70298, 70372 & 70579/2017-CU[DB]

(Arising out of Order-in-Original No. LKO/EXCUS/000/COM/ST/038/2016-17 dated 02/02/2017 passed by Commissioner of Central Excise & Service Tax, Lucknow)

M/s Rajeev & Company (In Appeal No. E/70298/2017),
CCE & ST, Lucknow (In Appeal No. E/70372/2017) &
CCE & ST, Lucknow (In Appeal No. E/70579/2017) Appellant

Vs.

CCE & ST, Lucknow (In Appeal No. E/70298/2017),
M/s Rajeev & Company (In Appeal No. E/70372/2017) &
M/s Rajeev & Company (In Appeal No. E/70579/2017) Respondent

Appearance:

Shri Shri Dharmendra Kumar Srivastava, (CA), for Appellant/Assessee
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent/Revenue

CORAM:

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

Date of Hearing & Date of Decision : 13/02/2019
FINAL ORDER NO. **70298-70300/2019**

Per: Anil G. Shakkarwar

The above state three appeals are arising out of common impugned Order-in-Original and therefore they are taken together for decision. Appeal No. ST/70298/2017 is filed by the Service Provider and the other two appeals are filed by Revenue.

2. After hearing both the sides duly represented by Shri Dharmendra Srivastava appearing on behalf of the Service Provider & Shri Pawan Kumar Singh, Superintendent (AR) on behalf of the Revenue, we note that the Service Tax amounting to Rs.5,84,298/- has been confirmed against the Service Provider by the learned Commissioner. On carefully

examination of the facts on record, we note that the Service Provider was receiving material from the supplier of material. The supplier of the material was including transportation charges in the invoice. We note that the Service Provider was purchasing the material and he had not engaged any transport agency for transportation of material. We note that the seller of the material to the Service Provider had engaged the transport agency for transport of goods, which included transportation charges of the same to the Service Provider's end. We, therefore, do not find that the services of Goods Transport Agency were engaged and received by the Service Provider. We also note that the plea of the Service Provider that the fact whether Service Tax was paid by the supplier of the material, who had engaged transportation charges cannot be verified by the Service Provider. Appreciating the facts on record and noting the provisions of law including the provisions under Rule 2(1)(d)(v) of Service Tax Rules, 1994, we do not find confirmation of demand of Service Tax against the Service Provider in the present case to be sustainable. We, therefore, allow Appeal No. ST/70298/2017 filed by the Service Provider.

3. In so far as Appeal No. ST/70372/2017 is concerned, we not that Appeal No. ST/70372/2017 & Appeal No. ST/70579/2017 both were filed by Revenue against same impugned Order-in-Original. Therefore, we hold that Appeal No. ST/70579/2017 is infructuous.

4. In so far as Appeal No. ST/70372/2017 is concerned. We have heard both the sides and perused the facts on record. On perusal of record, we note that there were various services provided by the Service Provider, which included Construction of Residential Complex for Manyavar Shri Kanshi Ram Garib Avas Yojna. In addition there were other services such as Earthwork at Bandha, Maharajaganj Canal, Supply of Boulders, Pitching Earthwork at Alipur, Flood Lighting at Ghaghra Tat Bandh and many other works which were covered by various independent contracts. We observe that the Original Authority should have examined each and every contract independently and given findings. Therefore, the dropping of the demand to the extent of Rs.2,13,06,917/- does not appear to us on the basis of strong evidences taken into consideration. We therefore, set aside that part of the order and remand the that matter back to the Original Authority to give finding on each independent contract that is covered by the impugned Show Cause Notice. In above terms, we disposed of all the three appeals.

(Dictated in Court)

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

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ansari