IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. ST/71307/2018-CU[DB]

(Arising out of Order-in-Appeal No.200-ST/APPL/KNP/ADG-NACIN/2017-18 dated 27/04/2018 passed by National Academy of Customs, Indirect Taxes & Narcotics, Kanpur)

M/s Kush Constructions **Appellant**

Vs.

CGST NACIN, ZTI, Kanpur **Respondent**

Appearance:

Shri A.K. Singh (Authorized Representative) for Appellant
Shri Shiv Pratap Singh (Dy. Commr.) AR for Respondent

CORAM:

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

Date of Hearing : 20/02/2019
Date of Decision : 20/02/2019

FINAL ORDER NO. - **70323/2019**

Per: Anil G. Shakkarwar

After hearing both the sides duly represented by Shri A.K. Singh authorized representative of the appellant on behalf of the appellant and Shri Shiv Pratap Singh learned A.R. on behalf of the Revenue, we note that through impugned order service tax of Rs.93,000/- was confirmed alongwith equal penalty. On perusal of record, we note that the appellants were registered with the Service Tax Department and also they were filing ST-3 returns. Revenue has compared the figures reflected in the ST-3 returns and those reflected in Form 26AS filed in respect of the appellant as required under the provisions of Income Tax Act, 1961. We note that without further examining the reasons for difference in two, Revenue has raised the demand on the basis of difference between the two. We note that Revenue cannot raise the demand on the basis of such difference without examining the reasons for said difference and without establishing that the entire amount received by the appellant as reflected in said returns in the Form 26AS being consideration for services provided and without examining whether the difference was because of any exemption or abatement, since it is not legal to presume that the entire differential amount was on account of consideration for providing services. We, therefore, do not find the said show cause notice to be sustainable. In view of the same, we set aside the impugned order and allow the appeal.

(Dictated & Pronounced in Court)

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

Lks