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

APPEAL No.ST/71129/2018-CU[DB]

(Arising out of Order-in-Appeal No.143/ST/Appeal/Audit/LKO/2018 dated 22/03/2018 passed by Commissioner (Audit), l Goods & Service Tax and Central Excise, Lucknow)

M/s Syndicate Contractors **Appellant**

Vs.

Commissioner (Audit), Goods & Service Tax, Lucknow **Respondent**

Appearance:

Shri Dharmendra Srivastava for Appellant
Shri Pawan Kumar Singh, Superintendent (AR), for Respondent

CORAM:

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

Date of Hearing/ Decision : 27/02/2019

FINAL ORDER NO.**70408 / 2019**

Per: Archana Wadhwa

We note that the appellants were placed with work contract orders by the Railways for supply and erection of signal systems. Inasmuch as the works contract services provided to Railways were exempted from payment of service tax, appellant was not paying any tax. However, revenue undertook a view that the use of material in providing the said services is on the lower side and as such the cost of the material used by them is much less. In such a scenario the work orders cannot be held to be falling under the category of works contract service and the same were covered by the installation, erection and commissioning service. Accordingly, demands were raised which stand confirmed in the impugned order along with imposition of penalty.

2. After hearing both the sides, we find that admittedly definition of works contract service nowhere refers to the cost of the material to be used by the service provider Irrespective of the value of such material to be used, if a service is to be provided along with material, the same would qualify under the works contract service. As such, we find no merits in the Revenue's stand for taking out the said service from the category of works contract on account of the lower value of the materials to be used.

3. Learned advocate also draws our attention to an order of the Tribunal being Final Order No.72610/2018 dated 15.11.2018 in the case of M/s Kailash Electricals V/s Commissioner, Customs, Central Excise & Service Tax, Kanpur. He submits that the said assessee was too providing identical services and the Tribunal vide the said order has remanded the matter to the Original Adjudicating Authority to treat the same as works contract and to re-decide the issue. He further submitted that a part of the period involved is also after the negative list. As such, he prayed that matter be remanded for fresh decision.

4. No objection by learned A.R.

5. In view of the forgoing, we set aside the impugned order and remand the matter to Original Adjudicating Authority for fresh decision in the light of the observations made by us as above.

6. Appeal is thus allowed by way of remand.

(Pronounced & Dictated in Court)

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

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