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

APPEAL No. ST/70273/2016-CU[DB]

(Arising out of Order-in-Appeal No.224/ST/ALLD/2015 dated 23/11/2015 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Allahabad)

M/s A & P Associates **Appellant**

Vs.

Commissioner of Central Excise

& Service Tax, Allahabad **Respondent**

Appearance:

Request for Adjournment 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 : 26/02/2019
Date of Decision : 26/02/2019

FINAL ORDER NO. – 70392/2019

Per: Archana Wadhwa

On matter being called, our attention stands drawn to the advocate's request for adjourning the matter. However, we find that a short issue is involved which can be disposed of even in the absence of the appellant's advocate. Accordingly, we have heard learned A.R. appearing for the Revenue.

2. On going through the impugned order, we note that the appellants were found engaged in providing 'Works Contract Services' to M/s Indian Oil Corporation Ltd. as also to M/s Bharat Petroleum Corporation Ltd. and were discharging their service tax liability. Based upon the scrutiny of the record as also the record of the service recipient, proceedings were initiated against them, which resulted in passing of the order by the Original Adjudicating Authority confirming the demand and imposing penalties.

3. The appellant challenged the said order before Commissioner (Appeals) and raised the following grounds:-

I. Quantification of service tax is not correct.

II. Threshold exemption during 2007-08 is admissible.

III. Service tax had not received separately. Hence, cum tax benefit may be extended.

IV. Amount received on account of Construction of drive way (related road) at Petrol pumps may be excluded from gross amount.

V. Imposition of penalty under Section 78 of the Act is not justified as the service tax has been paid well within the time.

4. The Commissioner (Appeals) agreed to the availability of threshold exemption but rejected assessee's request for treating the entire consideration as cum duty price as also their contention of excluding the amounts for construction of the Drive way at Petroleum Pump. He also upheld the penalty but gave an option to the assessee to pay the entire dues within the period of 30 days, on account of which, penalty shall be reduced to 25%.

5. As regards the assessee's plea of treating the entire consideration as cum duty, we note that the law is no more *res integra* and stands settled by various decisions that in case of non-recovery of tax separately, the tax amounts has to be considered a part of the total consideration received for the services and the benefit of cum duty has to be provided. Similarly, we note that the construction of Drive way at Petroleum Pump has been held to be non-taxable by the Tribunal in the case of A.T.N. Advertising Services vs. Commissioner of Central Excise & Service Tax, Allahabad 2018 (9) G.S.T.L. 301 (Tri.-All.). As such, we are of the view that inasmuch as re-quantification of the liability is required, the matter should go back for fresh quantification of the demand. Accordingly, we set aside the impugned order and

remand the matter to Original Adjudicating Authority for re-quantification by taking into consideration the above referred decision of the Tribunal. As the matter stands remanded, we give liberty to the appellant to contest all the other issues, if any, before Original Adjudicating Authority, including the issue of imposition of penalty. Appeal is disposed of in above manner.

(Dictated & Pronounced in Court)

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

Lks