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

APPEAL No.ST/71112/2018-CU[DB]

(Arising out of Order-in-Appeal No. 138-ST/APPL/KNP/ADG-NACIN/2017-18 dated 09/04/2018 passed by Commissioner of Customs, Indirect Taxes & Narcotics, (ZTI), Kanpur)

M/s Ghanshyam Das Contractor, **Appellant**

Vs.

Commissioner of Central Excise & S.T., Kanpur **Respondent**

Appearance:

Shri Dharmendra Srivastava, Chartered Accountant for Appellant
Shri Pawan Kumar Singh, Supdt (AR), for Respondent

CORAM:

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

Date of Hearing : 06/03/2019
Date of Decision : 06/03/2019

FINAL ORDER NO-**70518 / 2019**

Per: Anil G. Shakkarwar

After hearing both sides duly represented by learned Chartered Accountant Shri Dharmendra Srivastava for appellant & learned A.R. Shri Pawan Kumar Singh, Supdt for revenue, we note that appellant were providing 'Cleaning Services to railways for the period from 2008-09 to 2013-14. The contention of appellant before learned Commissioner (Appeals) was that the cleaning services provided to railways were classifiable under works contract service since they were consuming material and work contract service provided to railways was exempted. Learned Commissioner (Appeals) has held that 'Cleaning Services' provided to railways do not fall under the category of 'Works Contract Service' and therefore the service tax of around Rs.3,28,000/- stands confirmed against the appellant for the above stated period along with equal penalty.

2. The contention of learned Counsel is that the said services were classifiable under 'works contract service' and therefore exempted. We note that in 'works contract service' there is essential element of transfer of property to the service recipient. Said aspect is not available in the present case. Therefore, we agree with the learned Commissioner (Appeals) that cleaning services provided by appellant to railways do not fall under 'works contract service'. We note that the show cause notice was issued for demand by invoking extended period of limitation and the information was collected from balance sheet and form 26AS statement filed with the Income Tax authorities. We note that appellants were having the reasonable belief about the classification of services. Further, the balance sheet is a public document and therefore, the element of suppression of fact is not established in the present case. We, therefore, set aside the penalty imposed on the appellant and set

aside the demand for extended period of limitation. We, therefore, allow the appeal for the extended period by confirming the demand along with interest for normal period of limitation, which will be re-quantified by the jurisdictional Assistant Commissioner.

3. In above terms appeal is partially allowed.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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