IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD

COURT No. I

APPEAL No.ST/70841/2018-CU[DB]

(Arising out of Order-in-Appeal No. 65-ST/APPL/KNP/ADG-NACIN/2017-18 dated 08/03/2018 passed by Commissioner of Central Excise & Customs (Appeals), Kanpur)

M/s Shiv Kumar Singh Chanel, Proprietor **Appellant**

Vs.

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

Appearance:

Shri Dharmendra Srivastava, Chartered Accountant for Appellant
Shri Gyanendra Kr. Tripathi, Deputy Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 08/03/2019
Date of Decision : 08/03/2019

FINAL ORDER NO-**70625 / 2019**

Per: Archana Wadhwa

After hearing both the sides duly represented by learned Chartered Accountant Shri Dharmendra Srivastava and learned A.R. Shri Gyanendra Kumar Tripathi, Deputy Commissioner we note that Service Tax to the tune of around Rs.3.58 lakhs stands confirmed against the appellant under the category of 'Commercial and Industrial Construction Services'.

2. Learned Advocate submits that out of said demand, tax to the extent of around Rs.2.77 lakhs is in respect of construction of houses under 'Manniya Shri Kanshiramji Shahri Garib Avas Yojna' which has been held to be exempted

from payment of service tax by the Tribunal in the case of Commissioner of Customs, Central Excise & Service Tax, Allahabad Vs Ganesh Yadav reported as 2017 (6) GSTL 428 (Tri.-Allahabad). As regards the balanced demand, he submits that if the construction under the said Konshiram Yojana is taken out of consideration, the balance activities would get covered by the Small Scale Exemption Notification and there would not be any liability on the part of appellant to pay service tax.

3. After hearing the learned A.R. appearing for revenue, we find that in the above referred decision of the Tribunal in the case of Shri Ganesh Yadav, the construction of houses for economically weaker section under the said yojna have been held to be covered by exclusion clause and is not taxable. As such the assessee's plea that the balance amount would get covered by the Small Scale Exemption Notification is required to be examined by the lower authorities. For the said purpose, we set aside the impugned order and remand the matter to Original Adjudicating Authority for doing the needful.

4. Appeal is allowed by way of remand.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

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