CUSTOMS, EXCISE & SERVICE TAX APPELLATETRIBUNAL ALLAHABAD

REGIONAL BENCH -COURT No. I

Excise Appeal No.71113 of 2018-EX[DB]

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-1049-1950-2017-18 dated 27/03/2018 passed by Commissioner of Central Goods & Service Tax (Appeals), Noida)

M/s Gupta Engineers & Contractors, ...Appellant

(195, Patel Nagar,

Distt. Hapur (UP)-245101)

VERSUS

Commissioner of Central Excise & Service Tax

(Hapur) **....Respondent**

WITH

Service Tax Appeal No.71219 of 2018

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APP-1049-1950-2017-18 dated 27/03/2018 passed by Commissioner of Central Goods & Service Tax (Appeals), Noida)

M/s Gupta Engineers & Contractors, ...Appellant

(195, Patel Nagar,

Distt. Hapur (UP)

VERSUS

Commissioner of Central Excise & Service Tax

(Hapur) **....Respondent**

APPEARANCE:

Shri Bharat Bhushan Sharma, Advocate for the Appellant
Shri Rajeev Ranjan, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER(TECHNICAL)

FINAL ORDER NO-70769-70770 / 2019

Date of Hearing : 08/04/2019
Date of Decision : 08/04/2019

PER: ARCHANA WADHWA

After hearing both the sides, we note that the appellant was providing construction services to M/s Bhopal Development Authority and M/s Greater Noida Development Authority. They were registered with the Service Tax Department under the category of Construction Services and were discharging their service tax liability accordingly.

2. Revenue, by entertaining a view that the services provided by the appellant would be properly classifiable under 'Works Contract Services', initiated proceedings against them for confirmation of differential duty. During the course of adjudication, the appellant accepted that their services would be classifiable under works contract but claimed benefit of Notification No.30/2012-ST dated 20.06.2012. In terms of the said notification, the services provided to Development Authorities Body Corporate required payment of service tax to the extent of 50% by service provider and the balance 50% is to be paid by the service recipient. Accordingly, they contended that inasmuch as their services were being provided to Bhopal Development Authority and Grater Noida Development Authority, which are Body Corporate, the appellant is liable to pay only 50% of the demand. They further submitted that said demand stands paid by them and as such nothing survives against them.

3. The Lower Authority denied the benefit of the notification in question on the ground that Bhopal Development Authority and also Greater Noida Development Authority cannot be considered to be body corporates. For better appreciation of the reasoning adopted by the Commissioner (Appeals), we reproduce para-4 of the impugned order:-

> "4. I find that in the impugned case the Appellant contended that Bhopal Development Authority and Greater Noida Development Authority were Body Corporate and has relied on the case of Asish Tandon Vs GNIDA [AIR 2005 (All) 99, 2005 (2)

AWC 1677] and Tribunals matter of GNIDA [2015 (038) STR 1062 (Tri.-Del.)], to establish that GNIDA & Bhopal Development Authority are body corporate under clause (7) of section 2 of the Companies Act, 1956 (1 of 1956). In both the cited case laws it was observed that M/s Grater Noida Industrial Development Authority was a body corporate constituted under Section 3 of UP Industrial Area Development Act, 1976. However, both these citation do not confirm that both these were body corporate under clause (7) of Section 2 of the Companies Act, 1956 (1 of 1956). These citations only say that GNIDA was established by the Act of UP Government as body corporate and had its own rules and regulations that may not subscribe to the rules prescribed under Companies Act, 1956 enacted by the Union Government. Therefore, without any conclusive evidence to show that both bodies were body corporate under clause (7) of Section 2 of the Companies Act, 1956 (1 of 1956), it is not possible to admit the appellant's plea. The appellant at the prime stage and at the appellants stage failed to produce such evidence or certificate where it was stated or proved that Bhopal Development Authority and Greater Noida Development Authority are Body Corporate under the Companies Act so as to make certain that they were eligible to avail benefit of clause I (A) (v) of the Notification No.30/12 dated 20.06.2012. Moreover the Appellant also failed to produce any certificate given by these so called body corporate that work contract was actually enacted by the Appellant. This is a prerequisite for making such claim. The failure of the Appellant to submit such certificate/evidence to conclusively prove that they provided service to a body corporate under clause (7) of Section 2 of the Companies Act, 1956 (1 of 1956) has rendered their plea that they were entitled to pay only 50% of Service Tax due on the Works Contract Service Provided by them in the impugned matter unsustainable. The adjudicating authority has therefore correctly held that the appellant was liable to pay full tax."

4. As is seen from the above, the Appellate Authority is not disputing the fact that Bhopal Development Authority as also Greater Noida Development Authority are Body Corporate.

However, he is further observing that they have not been established Body Corporate under Clause (7) of Section 2 of the Companies Act, which is requirement of the notification in question. We have seen the said Clause (7) of Section 2 of the Companies Act the said Section has inclusive definition which include the companies incorporated Out-side India but further excluded certain Body Corporates, which Central Government, may by the notification in the public Official Gazettes, specify in this behalf. Admittedly, the two service recipient are body corporate as held in the above referred two decisions and it is also not the revenue’s case that they have been specifically excluded from definition by the Central Government, by way of issuance of notification. In this scenario, we find no reasons to uphold the impugned orders. However, the facts is as to whether the appellant has paid 50% of the duty or not, is required to be checked by the Original Adjudicating Authority to whom the matter is being remanded.

5. Both the appeals are disposed of in above terms.

(Dictated and pronounced in open court)

(ArchanaWadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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