CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 71002 of 2018-ST[SM]

(Arising out of Order-in-Original No. 158-ST/APPL/KNP/ADG-NACIN/2017-18 dated 17/04/2018 passed by Additional Director General, National Academy of Customs, Indirect Taxes & Narcotics (ZTI), Kanpur)

M/s Goldiee Masala Pvt. Ltd., **.....Appellant**

(51/40, Naya Ganj, Kanpur)

VERSUS

Commissioner of CGST & S.T.,

(Kanpur) **....Respondent**

APPEARANCE:

Shri Ashish Kumar Shukla, Advocate for the Appellant
Shri Pawan Kumar Singh, Superintendent Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO-70799 / 2019

Date of Hearing : 18/04/2019
Date of Decision : 18/04/2019

PER: ANIL G. SHAKKARWAR

After hearing both the sides duly represented by Shri Ashish Kumar Shukla learned Advocate for the appellant and Shri Pawan Kumar Singh learned Superintendent A.R. for revenue, I note that there are two issues in dispute in the present appeal, I will take them up separately.

2. First dispute is related to confirmation of demand of interest and penalty of service tax to the tune of Rs.13,201/- which has been claimed by revenue as 'works contract service'. On perusal of record, I notice that the revenue could not establish the said service as 'works contract service' throughout the proceedings. I, therefore, set aside the demand as also interest and penalty related to confirmation of service tax on 'works contract service' under reverse charge mechanism from the appellant who is service receiver. The document produced before the Original Authority established that the said service was 'repair and maintenance service'.

3.1 The other issue involved in the present appeal is related to appellant, making adjustment of excess paid service tax of Rs.29,631/- paid in the year 2010 and adjusted in the month of August, 2012. Revenue has objected to the said adjustment and confirmed the demand with interest and penalty, stating that the said adjustment should have not been implemented in the subsequent month or quarter as the case may be, as provided in the Service Tax Rules, 1994.

3.2 I find that the issue is no more res-integra and stands settled by this Tribunal's decision in the case of M/s Siemens Ltd. Vs Commissioner of Central Excise, Pondicherry reported as 2013 (29) STR 168 (Tri.-Chennai) wherein it was held that if the adjustment of excess paid amount is denied then there will be twice payment of service tax for the same service. relying on the earlier decision of this Tribunal, I hold that demand of Rs.29,631/- along with interest and penalty is not sustainable.

4. There is another issue of payment of interest of Rs.247/- which has not been pressed by the appellant.

5. In above terms, impugned order is modified and appeal is allowed. Appellant shall be entitled for consequential relief, as per law.

(Dictated and pronounced in open court)

(Anil G. Shakkarwar)
Member (Technical)

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