CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD

REGIONAL BENCH : COURT NO.I

Service Tax Appeal No.70372 of 2018-CU[DB]

[Arising out of Order-in-Appeal No.NOIDA-EXCUS-001-APP-1533-17-18 dated 29.12.2017 passed by Commissioner, Central Tax(Appeals), Noida.]

M/s. Ahluwalia Contracts India Ltd.
(A-177 Okhla Phase-I, New Delhi)

...APPELLANT(S)

VERSUS

Commr. of Customs, Central Excise & Service Tax, Noida
RESPONDENT (S)
(GST Commissoinerate, C-56/42, Renu Tower, Sector-62,
Noida, Uttar Pradesh)

APPEARANCE
Shri S.K.Sarwal (Advocate) for the Appellant (s)
Shri Gyanendra Kumar Tripathi (Dy.Commr.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

FINAL ORDER NO.70764/2019

DATE OF HEARING : 07.03.2019
DATE OF DECISION : 07.03.2019

MRS. ARCHANA WADHWA :

After hearing both sides we find that the appellant is a company engaged in providing construction services and is duly registered with the department under the category of works contract. The appellant is discharging its Service Tax liability accordingly.

2. During the course of construction, the appellant is also hiring the services of various sub-contractors for executing their contracts. The appellant is providing labourers to the sub-contracts, the wages of which are adjusted by the appellant against their bills.

3. Revenue by entertaining a view that such supply of labourers to the sub-contractors is taxable under the category of supply of

manpower raised demand against them by invoking the longer period, which stands confirmed by the lower authorities to the extent of around Rs.10.00 Lakhs. In addition penalties stand imposed upon them.

4. The appellant's contention is that they engaged the labourers for their own work and in case of excess of the labourers, the same are given to the sub-contracts executing part of works contract. The appellant as also the sub-contractors have paid Service Tax including the labourers' wages and there was no justification for further confirmation of Service Tax. In any case, the appellant is not providing services under manpower recruitment or supply agency services and as such no demand can be confirmed against them. The demand is also assailed on the limitation aspect by submitting that show cause notice was issued on 30.09.2015 for the period 2010-11 to December 2014.

5. After going through the impugned orders we note that the appellant is a construction company and not an agency for supply of manpower. The use of the labourers, which are engaged by the appellant for carrying their own construction work, by the sub-contractors cannot be held as an activity of supply of manpower. The wages of the labourers are adjusted against the Bills of sub-contractors, which the sub-contractor has already discharged its Service Tax liability. As such we find no reason to uphold the impugned order. Accordingly, the same is set aside and appeal is allowed with consequential relief.

(Operative part of the order was pronounced in the open Court.)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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