CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.70958 of 2018-CU[DB]

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-2043-17-18 dated 28/03/2018 passed by Commissioner (Appeals), Central Tax, Noida)

M/s L.E. & M.W. Works **.....Appellant**

Near Doordarshan Kendra,

Badaun Road,

Bareilly

VERSUS

Commissioner CGST, Gautam Buddha Nagar

.....Respondent

APPEARANCE:

Shri Kartikeya Narain, Advocate for Appellant
Shri Gyanendra Kumar Tripathi, Authorized Representative for Respondent

CORAM :
Hon'ble Mrs. ARCHANA WADHWA, MEMBER (JUDICIAL)
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING : 07.03.2019
DATE OF DECISION : 14.05.2019

FINAL ORDER NO. **70937 / 2019**

ANIL G. SHAKKARWAR

After hearing both the sides duly represented by Shri Kartikeya Narain, learned advocate on behalf of the appellant and Shri Gyanendra Kumar Tripathi, learned Deputy Commissioner on behalf of the Revenue, we note that the appellant were providing certain services to M/s BSNL. The appellant were issued with a show cause notice dated 29.06.2015, wherein a demand of Rs.19,40,749/-

was raised against the appellant. The said show cause notice also mentioned that appellant had already deposited the amount of Rs.3,79,415/- and another amount of Rs.7,05,538/-. On contest, the show cause notice was adjudicated through Order-In-Original dated 02.08.2016. The Original Authority has observed that the appellant had already deposited duty of Rs.10,84,953/- which was appropriated by him after confirming demand of Rs.19,40,749/-. Before the Original Authority appellant had submitted that M/s BSNL had deducted Rs.8,72,560/- and deposited the same as Service Tax. Aggrieved by the Original Order appellant preferred appeal before Commissioner (Appeals) wherein appellant submitted that the appellant was not liable for payment of service tax of Rs.8,72,560/- which was paid by M/s BSNL, the service recipient under reverse charge. Further, appellant relied upon final order of this Tribunal in the case of M/s Navyug Alloys Pvt. Ltd. V/s Commissioner of Central Excise & Customs, Varodara-II reported at 2009 (13) S.T.R. 421 (Tri.-Ahmd.). However, learned Commissioner (Appeals) rejected appellant's appeal before him. Aggrieved by the said order appellant is before this Tribunal.

2. After having heard both the sides and on perusal of records, we note that the Lower Authorities have accepted that out of demand of Rs.19,40,749/- appellant had paid Rs.10,84,963/- before issuance of show cause notice. Further appellant have submitted that the service recipient M/s BSNL had deposited service tax of Rs.8,72,560/- on the same services for which demand was raised. We note that this Tribunal in the above stated case of M/s Navyug Alloys Pvt. Ltd. had held that once tax is already paid on the services, it was not open to the Department to confirm the

same against the appellant in respect of the same services, since after accepting the said tax from service recipient Revenue did not refunded the same. In the present case, we find that the dispute is only related to the amount of service tax of Rs.8,72,560/- which the appellant has submitted that the said service tax was paid by service recipient under reverse charge mechanism. We, therefore, find that on the same services provided when the entire tax was already paid and service recipient was not refunded the tax paid under reverse charge mechanism if the same service tax is once again confirmed then it will amount to double taxation. We, therefore, hold that without interfering that service tax already paid by the appellant and service recipient, rest of the order is set aside.

3. Accordingly, appeal is disposed of.

(Order Pronounced in the open Court on 14.05.2019.)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

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