CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 71174 of 2018-[Division Bench]

(Arising out of Order-in-Appeal No. 233-235-ST/APPL/LKO/2018 dated 28/03/2018 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

Commissioner of Central Excise, **.....Appellant**

(Allahabad)

VERSUS

M/s Deora Electricals, **....Respondent**

(6, Sardar Patel Marg, Allahabad)

WITH

Service Tax Appeal No. 71168 of 2018-[Division Bench]

(Arising out of Order-in-Appeal No. 233-235-ST/APPL/LKO/2018 dated 28/03/2018 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

Commissioner of Central Excise, **.....Appellant**

(Allahabad)

VERSUS

M/s Deora Electricals, **....Respondent**

(6, Sardar Patel Marg, Allahabad)

APPEARANCE:

Shri Pawan Kumar Singh, Superintendent Authorised Representative for the Appellant
Shri Nishant Mishra & Shri Nitin Chopra, Advocates for the Respondent

CORAM:

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

FINAL ORDER NOs-71046-71047 / 2019

Date of Hearing : 21/05/2019
Date of Decision : 21/05/2019

PER: ANIL G. SHAKKARWAR

Above stated two appeals filed by revenue are arising out of common impugned Order-in-Appeal No. 233-235-

ST/APPL/LKO/2018 dated 28/03/2018 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow, therefore, they are taken together for decision.

2. Brief facts of the case are that the respondents were engaged in providing various services to M/s Military Engineering Services, Railways, M/s BSNL and UPSTD Corporation Ltd. For the financial year 2012-13 revenue issued a show cause notice dated 21.05.2014 to respondent demanding service tax of around Rs.38 lakhs. The said show cause notice was adjudicated through the impugned Order-in-Original dated 28.02.2014. For the financial year 2013-14 another show cause notice dated 23.03.2015 was issued to the respondent demanding service tax amounting to around Rs.28 lakhs. The said show cause notice was adjudicated through Order-in-Original dated 10.09.2016. The appeals arising out of the said two Orders-in-Original is decided through common impugned Order-in-Appeal. The learned Commissioner (Appeals) has set aside the said two Orders-in-Original dated 28.02.2015 and 19.10.2016 and therefore, the revenue is in appeal before this Tribunal.

3. We have heard Shri Pawan Kumar Singh, learned Superintendent on behalf of revenue and Shri Nishant Mishra along with Shri Nitin Chopra learned Advocates on behalf of the respondent. Further, we have perused the records.

4. The learned Commissioner (Appeals) has held as follows:-

> "9. As far as the demand for the period 01.04.2012 to 30.06.2012 is concerned, I observe that railways was excluded from the levy of service tax under "work contracts service". RRegarding demand of service tax from

Militarry Engineering Services (MES), the appellant has submitted that they have constructed the civil structure for MES, viz.

(a) Construction of computerized pilot section system building at Air Force Varanasi.

(b) Construction of security perimeter wall & news sub-station building for installation of new 3KV equipments at Air Force station Bamrauli along with electrical equipments.

(c) Construction of residential accommodation 35 in nos. for the family of JCOs.

All these civil construction has been done for the defense forces and are not for the purpose of commerce or industry. Therefore, such services are not covered under the taxable service defined under section 65 (105) (zzzza) of the said Act. Further, some other services provided by the appellant to MES, like repair and maintenance of transformers and electricity supply systems, are also not covered under the taxable service defined under Section 65 (105) (zzzza) of the said Act.

10. From 01.07.2012, the mega exemption vide entry no.12 exempts the following services:-

Services provided to the Government, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of-

(a) A civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;

Where "Original works" means-

(i) All new constructions;

(ii) All types of additions and alterations to abandoned or damaged structures on land that are required to make them workable;

(iii) Erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise;

In the present case, Indian Railways and Military Engineering Services are governmental authority and the said notification exempts services provided to them by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of a civil structure or any original work and more importantly original works covers "erection, commissioning or installation of plant, machinery or equipment or structures, whether pre-fabricated or otherwise."

Further, S.No.14 of the Mega Exemption notification specifically exempts the services by way of construction, erection, commissioning, or installation or original works pertaining to,-

"railways, including monorail or metro;"

11. Apart from Works contract service, the taxable amount in FY 2012-13 is Rs.5,32,008/= and in FY 2013-14 the same is only Rs.82,160/= which are much below the threshold exemption limit. The appellant has also claimed before CESTAT that their gross turnover in FY 2011-12 was Rs.248742/=, as recorded in para 2 of Allahabad bench and CESTAT final order no.71141/2017, dated 25.09.2017. Thus, the appellant are eligible to threshold exemption in FY 2012-13 and FY 2013-14."

Further, independently, the learned Commissioner (Appeals) has also referred to the Final Order of this Tribunal bearing no.71141/2017 dated 25.09.2017 through which an earlier demand for the period from October, 2007 to March, 2012 adjudicated through Order-in-Original dated 07.11.2014 which was set aside for the reason that the show cause notice was vague and incomprehensible. We note that revenue has raised two grounds in the present appeal the first ground is that the learned Commissioner (Appeals) has relied upon the decision of this Tribunal in the said Final Order No.71141/2017 dated 25.09.2017 and that the said Final Order is under challenge before Hon'ble High Court of Allahabad. The other ground is in respect of the finding by Original Authority.

5. We note that the learned Commissioner (Appeals) has not relied on the decision on said Final Order dated 25.09.2017 and given his independent finding on the basis of fact and law. Therefore, the said ground raised by revenue is not sustainable. Further, the other ground raised by revenue which is in respect of finding by Original Authority and the same has been adjudicated by learned Commissioner (Appeals) and since the finding of learned Commissioner (Appeals) has not been challenged on the basis of any infirmity in the same the other ground also does not sustain.

6. In view of the above finding, we reject the appeal filed by the revenue and uphold the impugned Order-in-Appeal.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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