CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 71278 of 2018-CU[DB]

(Arising out of Order-in-Appeal No. 191/Commr.(Audit)/ST/Appl./KNP/2018 dated 23/03/2018 passed by Commissioner of Central Tax & Central Excise (Appeals), Kanpur)

M/s Electro Builders, ...**Appellant**

(15/265, Civil Lines, Kanpur)

VERSUS

Commissioner of CGST & Central Excise, ...**Respondent**

(Kanpur)

APPEARANCE:

Shri Dharmendra Srivastava, Chartered Accountant for the Appellant
Shri Sandeep Kumar Singh, Deputy 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. 71084 / 2019

Date of Hearing : 27/02/2019
Date of Decision : 27/02/2019

PER: ANIL G. SHAKKARWAR

After hearing both the sides duly represented by learned Chartered Accountant Shri Dharmendra Srivastava on behalf of the appellant and Shri Sandeep Kumar Singh, learned Deputy Commissioner on behalf of revenue, we note that the proceedings were initiated against the appellant for recovery of service tax to the tune of Rs.39 lakhs in respect of various contracts executed by them. The appellants were registered with Service Tax Department for 'Erection, Commissioning &

Installation and Works Contract Service'. We have perused the impugned Order-in-Appeal. We reproduced para no.11.3 of the impugned Order-in-Appeal as follows:-

> "11.3 In respect of work orders listed at Sl.No.3, 4 & 5 in para 10 above, it is observed that in the notice issued to the appellant the work has been categorized as 'repair and maintenance of electrical wiring beyond distribution point' (para 10 of SCN) whereas in the impugned order it has been categorized as 'laying of high tension electric cables upto distribution point' (second last para of page 20 of Order-in-Original). This aspect is significant because as per clarification at s.no.5 & 6 of para 3 of Board's Circular No.123/5/2010-TRU dated 24.05.2010, activity is chargeable to Service Tax only if laying of electric cables is beyond the distribution point of residential or commercial localities/complexes and no Service Tax is chargeable if laying of cable is up to distribution point. The relevant portion of circular is reproduced bellow:-

S.No.	*Activity*	*Status*
1.	*Laying of electric cables up to distribution point of residential or commercial localities/complexes*	*Not a taxable service under any clause of sub-section (105) of section 65 of the Finance Act, 1994.*
2.	*Laying of electric cables beyond the distribution point of residential or commercial localities/complexes*	*Taxable service, namely 'commercial or industrial construction' or 'construction of complex' service [section 65 (105) (zzq)/(zzzh)], as the case may be.*

> Accordingly, in order to clarify the factual position a letter C.No.145-ST/Appeal/Knp./2014/1052 dated 20.03.2018 was issued to the Assistant Commissioner (Adj.), CGST & Central Excise, Kanpur, however, in reply dated 20.03.2018, Superintendent (Adj.) could not clarify the position. Accordingly, the impugned order in respect of these 03 work orders mentioned at Sl.No.3, 4 & 5 of above table is set aside with a direction to the adjudicating authority to re-determine the taxability after ascertaining the factual position."

2. On perusal of the said part of the impugned order, it is very clear that the learned Commissioner (Appeals) has not

come to any conclusion in respect of work orders listed at serial no.3, 4 & 5 of the list of work orders in para no.10 of the impugned Order-in-Appeal. We, therefore, find that the impugned order is to be incomplete and therefore, the same is not sustainable. We, therefore, remand the matter to learned Commissioner (Appeals) for fresh decision. We give liberty to the appellant to raise all the issues afresh before the learned Commissioner (Appeals).

3. In above terms, by setting aside the impugned order, we remand the matter to learned Commissioner (Appeals). Appeal is allowed by way of remand.

(Pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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