CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.70483 of 2016

(Arising out of Order-in-Appeal No.AGA-EXCUS-000-COM-0031-15-16 dated 17/02/2016 passed by Commissioner, Customs, Central Excise & Service Tax, Agra)

M/s Girrajjj Stone Crushers Private Ltd. .....Appellant

VERSUS

Commissioner of Customs, Central Excise & Service Tax,
.....Respondent
113/4, Sanjay Place, Agra- 282 002(U.P.)

APPEARANCE:

Ms. Stuti Saggi, Advocate for Appellant
Shri Sandeep Kumar Singh, Deputy Commissioner Authorized Representative for Respondent

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

DATE OF HEARING : 28 February, 2019
DATE OF DECISION : 28 February, 2019

FINAL ORDER NO.**71126 / 2019**

Per: ANIL G. SHAKKARWAR

After hearing both the sides duly represented by Ms. Stuti Saggi learned advocate on behalf of the appellant and Shri Sandeep Kumar Singh learned Deputy Commissioner on behalf of the Revenue, we note that the appellant were supplying 'Machine Crushed Stone Ballast' to Railways and they were engaged in providing activity of loading the said stone ballasted into hopper and railway wagons. The information about the activity carried out by the appellant was received by the Revenue through financial data received from third party source. Therefore, for the period from 2009-10 to 2013-14 investigations were carried out. For the period from 2009-10 to 2012-13 a show cause notice dated 21 October, 2014 was issued alleging that during the period up to 30 June, 2012 appellant were providing 'cargo handling service' and w.e.f. 01 July, 2012 appellant provided non-negative list services and show cuase notice was issued by invoking extended period of limitation and information was collected from the balance sheet of the appellant in respect of transactions. Another show cause notice dated 21 April, 2015 was issued in the form of statement making similar allegations for the financial year 2013-14 where the show cause notice was issued for normal period of limitation. Both the show cause notices were adjudicated through the impugned Order-In-Original. On contest by the appellant, the Original Authority has held that the demand of service tax of around Rs.8.26 crore was not sustainable since the same was in respect of such consideration which was either for sale of ballast to the appellant or for providing works contract services to Railways. Further he has held that activity of loading of ballast into hopper and wagons amounted to providing cargo handling services and non-negative list services and therefore, he confirmed demand of around Rs.14.6 lakhs and imposed few penalties. We note that appellant has vehemently contested on limitation arguing that the entire transaction was entered into balance sheet which is a public document and also that issue involved was of interpretational nature and therefore extended period was not invokable. We note that in the present case extended period of limitation was not available to Revenue. Therefore, we set aside all the penalties imposed and set aside demand out of Rs.14,64,639/- which falls under extended period of limitation and remand the matter to Original Authority to calculate service tax payable along with interest by the appellant for normal period of limitation out of said amount of Rs.14,64,639/-.

2. In above terms, appeal is allowed by way of remand.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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