CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.70382 of 2018

(Arising out of Order-in-Appeal No.146-ST/APPL/LKO/2018 dated 20/02/2018 passed by Commissioner (Appeals), Customs, GST & Central Excise, Lucknow)

M/s Anwar Ali **.....Appellant**

VERSUS

Commissioner of Central Excise & Service Tax, Allahabad

.....Respondent

APPEARANCE:

Shri Sita Ram, Consultant for Appellant
Shri Shiv Pratap Singh, Authorized Representative for Respondent

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

DATE OF HEARING : 17 June, 2019
DATE OF DECISION : 17 June, 2019

FINAL ORDER NO. **71149 / 2019**

ARCHANA WADHWA

After hearing both the sides duly represented by learned consultant Shri Sita Ram appearing on behalf of the appellant and learned AR, Shri Shiv Pratap Singh appearing on behalf of the Revenue, we find that the appellants were issued with a show cause notice proposing confirmation of demand under three categories like 'Works Contract Service', 'Management, Maintenance & Repair Services' & 'Site formation and clearance, excavation, earthmoving and demolition service'.

2. Commissioner (Appeals) vide his impugned order set aside the confirmation of demand under the category of works contract service but upheld the demand of Rs.3,32,597/- on both balance categories. However, the demand proposed under management, maintenance and repair service was also confirmed under the site formation and clearance service.

3. The objection of the learned consultant is demand of Rs.1,27,805/- which was proposed under the category of management, maintenance & repair service but confirmed under site formation and clearance, is not permissible. While doing so the Lower Authorities have travelled beyond the show cause notice as they cannot change the category of the demand. As regards the balance demand he submits that Lower Authorities have wrongly presumed that the consideration received by the appellant from Allahabad Development Authority were for site formation whereas the same were also towards the construction of residential flat under Manywar Shri Kansi Ram Shahari Garib Awas Scheme.

4. As regards the demand of Rs.1,27,805/-, we agree with the learned consultant that the same was raised under different category of service and was confirmed under the other category. The Tribunal in the case of M/s Mahakoshal Beverages Pvt. Ltd. V/s Commissioner of Central Excise, Belgaum reported as 2007 (6) S.T.R. 148 (Tri.Bang.) has held that the Adjudicating Authority cannot confirm the demand under the category other than the one which was raised in the show cause notice. As such we find no justification in confirmation of demand of service tax of Rs.1,27,805/-, which is set aside along with setting aside of penalty on the said count.

5. As regards the balance demand of Rs.2,04,792/-, we find that the appellant's claim that the same was on account of construction of residential complexes requires verification. For the said limited purpose, we remand the matter to the Original Adjudicating Authority who would examine the documents to be produced by the appellant in support of their above contention. Needless to say that the appellants would be given liberty to put forth their case.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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