CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, ALLAHABAD

REGIONAL BENCH : COURT NO.I

Service Tax Appeal No.70373 of 2018

(Arising out of Order-in-Appeal No.NOIDA-EXCUS-001-APP-1536-17-18 dated 29.12.2017 passed by Commr.(Appeals) of Central Excise, Noida.)

M/s. Ahluwalia Contracts (India) Ltd.
(A-177 Okhla Phase-I, New Dlehi)

...Appellant

VERSUS

Commr. of Central Excise & Service Tax, Noida

.....Respondent

(GST Commissionerate,
C-56/42, Renu Tower, Sector-62
Noida, Uttar Pradesh)

APPEARANCE

Shri S.K.Sarwal (Advocate) for the Appellant (s)
Shri Gyanendra Kumar Tripathi (Dy.Commr.) (A.R.) for the Revenue

CORAM:

MRS. ARCHANA WADHWA, HON'BLE MEMBER(JUDICIAL)
SHRI ANIL G. SHAKKARWAR, HON'BLE MEMBER(TECHNICAL)

FINAL ORDER NO. 71174 / 2019

DATE OF HEARING : 24 June 2019
DATE OF DECISION : 24 June 2019

ANIL G. SHAKKARWAR :

After hearing both sides duly represented by Shri S.K.Sarwal, learned Advocate for the Appellant and Shri Gyanendra Kumar Tripathi, learned Dy.Commr. (A.R.) for the Revenue, we note that appellants were providing taxable service under the category of 'construction service'. During the period from July 2011 to March 2012, the appellant were discharging Service Tax liability on the basis of receipt of payment instead of accrual basis as required by Point of Taxation Rules, 2011.

Therefore, audit objection was raised against the appellant and accordingly appellant paid differential Service Tax amounting to Rs.5,68,486/- along with interest of Rs.5,34,603/- before issuance of show cause notice. Subsequently a show cause notice was issued on 30 September 2016 with a proposal to appropriate the Service Tax and interest already paid along with a proposal to impose penalty under Section 78 of Finance Act, 1994. The proceedings culminated into passing of the impugned order-in-appeal wherein the penalty imposed under section 78 is sustained.

2. After hearing both sides and on perusal of record we note that before issue of before show cause notice differential Service Tax and interest thereupon were paid by the appellant therefore as provided under sub-section 3 of section 73 of Finance Act, 1994 there was no provision for issue of show cause notice. We therefore hold that impugned order confirming imposition of penalty under section 78 of Finance Act, 1994 is not sustainable and the same is set aside so far as penalty is concerned. In above terms appeal is allowed.

(Dictated and pronounced in the open Court.)

SD/
(ARCHANA WADHWA)
MEMBER (JUDICIAL)

SD/
(ANIL G. SHAKKARWAR)
MEMBER(TECHNICAL)

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