CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.52403 of 2015

(Arising out of Order-in-Original No.10/COMMR/ST/GZB/2014-15 dated 30/01/2015 passed by Commissioner, Central Excise & Service Tax, Ghaziabad)

M/s Bhardwaj Construction Co. .....Appellant

VERSUS

Commissioner, Central Excise, Ghaziabad .....Respondent

APPEARANCE:

Shri Rajesh Chibber, Advocate 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 :19 June, 2019
DATE OF DECISION : 19 June, 2019

FINAL ORDER NO.**71196 / 2019**

ARCHANA WADHWA

After hearing both the sides, we find that Commissioner vide his impugned order has confirmed the service tax of Rs.41.72 lakhs in respect of various services like 'Construction of roads, drains, culverts, sewerage etc.' including the demand under the category of construction of 'Residential Complexes' in respect of houses constructed by the appellant under the Madhuban Bapudham Yojna floated by Ghaziabad Development Authority.

2. Learned advocate submits that two show cause notices for two different periods were issued to them. The first show cause notice was adjudicated by the Commissioner dropping the demand in respect of construction of roads, drainage and to confirm the demand only in respect of the houses constructed under Madhuban Bapudham Yojna. The said part of the Commissioner's orders was challenged by the appellant before Tribunal who vide Final Order No.71009/2019 dated 15 May, 2019 held that such activity of construction of houses under the Madhuban Bapudham Yojna was not taxable.

Further while deciding the second show cause notice issued on the same ground but for different period the Commissioner confirmed the demand on most of the grounds which he himself has dropped in the earlier order. The said order is impugned before us.

3. As regards the demand on construction of residential complex, we find that the issue stands decided in the same assessee's case vide Final order No.71009 of 2019 dated 15 May, 2019 refered supra. As such we hold that no service tax is payable on the said part of the activity.

As regards the balance demand, we take note of the submissions of the learned advocate that the demands were dropped by the Commissioner himself while passing the order on the first identical show cause notice. Though he submits that according to his knowledge, the said part of the earlier order passed by the Commissioner has not been challenged and has attended finality, we deem it fit to set aside the said part of the impugned order and remand the matter to Commissioner for verification of the above fact and then to re-decide the issue afresh.

4. As regards penalty we note that major part of the demand has already been set aside by us and the other part of the demand was set aside by the Commissioner in his first order, thus indicating the issue as a *bona fide* issue of interpretation. Accordingly, we set aside the entire penalty imposed upon the appellant.

5. Appeal is disposed of in above manner.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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