CUSTOMS, EXCISE & SERVICE TAX APPELLATETRIBUNAL ALLAHABAD

REGIONAL BENCH -COURT No. I

Service Tax Appeal No.70707 of 2018-[DB]

(Arising out of Order-in-Appeal No. 160/ST/Appeal/Audit-LKO/2018 dated 23/03/2018passed by Commissioner of Central Excise &Service Tax (Audit), Lucknow)

M/s Pappu Crane Service, ...Appellant

(F-1, Transport Nagar, Knpur Road, Lucknow)

VERSUS

Commissioner of Central Excise& Service Tax Respondent

(Lucknow)

APPEARANCE:

Shri Dharmendra Kumar, Advocate, for the Appellant
Shri Pawan 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. 71246 / 2019

Date of Hearing : 25/06/2019
Date of Pronouncement : 02/07/2019

PER: ARCHANA WADHWA

After hearing both the sides duly represented by Shri Dharmendra Kumar learned Advocate appearing for the appellant and Shri Pawan Kumar Singh learned authorized representative appearing for the revenue, we find that the appellant is registered with the Service Tax Department for providing taxable services. The revenue by referring to the balance sheet as also form 26AS return filed with the Income Tax Department entertained a view that the appellant had evaded service tax liability for the period 2010-11 to 2013-14 as also for the subsequent period. Inquiries were conducted and revenue formed an opinion that during the said period the appellant had provided services under the category of "Supply of Tangible Goods Services", which have evaded the service tax liability. Accordingly, proceedings were initiated against the appellant by way of issuance of two show cause notices dated 03.09.2015 and 05.04.2016, raising a demand of service tax to the tune of around Rs.21.73 lakhs approximately. The same stands confirmed by the lower authorities along with confirmation of interest and imposition of penalties.

2. We note that though the appellant have assailed the impugned order on merits as also on limitation by submitting that the activities undertaken by him were not supply of tangible goods service, inasmuch as, he was providing services to his customers by using the cranes owned by him. The said job-work was being done by him on time basis i.e. weekly, daily & monthly etc. Further, the figures reflected in balance sheet are also relatable to construction of road etc. which are not a taxable activity. Otherwise also, he submitted that the demand raised by invoking the longer period of limitation is solely based upon the profit and loss account and 26AS form submitted with the Income Tax Authorities which has been held to be as not proper by the Tribunal in various decisions. Reference stands made to the decision of Hon'ble High Court in the case of M/s Firm

Foundation and Housing Pvt. Ltd. Vs Principal Commissioner of Service Tax, Chennai (Madras) pronounced on 06.04.2018 in Writ Petition No.21799 of 2017, as also to the Tribunal's decision in the case of M/s Sigma Trade Wings Vs Commissioner of Central Excise, Lucknow Final Order No.70049 of 2019 dated 07.01.2019. It stands held in both the above decisions that the revenue's reliance upon profit and loss account are irrelevant for the purpose of confirmation of tax.

3. Inasmuch as, the revenue's entire case is based upon the profit and loss accounts read with the 26AS Form and the service tax stands confirmed by invoking the longer period of limitation, we are of the view that the impugned order of Commissioner (Appeals) is not sustainable on limitation itself. Accordingly, we set aside the same and allow the appeal with consequential relief to the appellant.

(Pronounced in open court on-02/07/2019)

(ArchanaWadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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