CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.70595 of 2018

(Arising out of Order-in-Appeal No.30/COMMISSIONER/DEHRADUN/2018 dated 21/03/2018 passed by Commissioner, Central Goods & Service Tax, Dehradun)

M/s Kanohar Electricals Ltd. **.....Appellant**

Rithani, Delhi Road,

Meerut.

VERSUS

Commissioner, Central Excise & CGST, Meerut

.....Respondent

APPEARANCE:

Shri Pravin Sharma, Advocate for Appellant
Shri S.P. Singh, Authorized Representative for Respondent

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

DATE OF HEARING : 02 July, 2019
DATE OF DECISION : 02 July, 2019

FINAL ORDER NO. **71304 / 2019**

PER : ANIL G. SHAKKARWAR

After hearing both the sides duly represented by learned advocate Shri Pravin Sharma appearing on behalf of the appellant and learned AR, Shri S.P. Singh appearing on behalf of the Revenue, we note that the appellants are manufacturer of transformers and as per the contract they have an obligation to supply the manufactured transformers to the buyer's premises. For such purpose they are charging fixed amount of freight and insurance through their invoices in addition to the price of the goods. The appellants are also engaging the services of actual goods transporters for transportation of said goods and paying service tax on such transportation of goods under reverse charge mechanism. It appeared to Revenue that appellant are collecting fixed amount of transportation charges irrespective of the actual amount of transportation charges paid by the appellant to their transporters. Therefore a view was entertained by revenue that the entire transportation charges collected by appellant from their customers constituted a service w.e.f. 01 July, 2012. Therefore, service tax demand of around Rs. 15 lakhs was raised for the period from 01 July, 2012 to 31 March, 2016. The demand was confirmed and penalty was also imposed.

2. On perusal of record we note that there is no exercise taken up by revenue to examine whether the actual transportation charges paid by the appellant to the transporters are more or less than the total amount of transportation charges collected by the appellant. The transportation charges actually paid to the transporters, have suffered service tax in the hands of appellants under reverse charge mechanism. Therefore by raising the demand on the total amount of freight charges collected by appellant without taking into consideration such component on which service tax has already been discharged has resulted in unsustainable demand. We, therefore, hold that revenue did not undertake the exercise of framing of any charge on the appellant on the basis of facts. We, therefore, hold that the said show

cause notice is not sustainable. We, therefore, set aside the impugned order and allow the appeal.

(Dictated and Pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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