CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 70435 of 2017-[DB]

(Arising out of Order-in-Original No.25/Commissioner/Noida/2016-17 dated 23/03/2017 passed by Commissioner of Service Tax, Noida)

M/s Shyam Kumar & Co. (P) Ltd., ...Appellant

(D-105, Sector-55, Noida)

VERSUS

Commissioner of Service Tax, ...Respondent

(C-56/42, Renu Tower, Sector-62, Noida)

APPEARANCE:

Shri Sanjay Kumar, Advocate for the Appellant
Shri P.K. Dubey, Supdt Authorised Representative for the Respondent

CORAM: HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO 71421 / 2019

DATE OF HEARING : 01 July, 2019
DATE OF PRONOUNCEMENT : 26 July, 2019

PER: ANIL G. SHAKKARWAR

After hearing both the sides duly represented by Shri Sanjay Kumar learned Advocate on behalf of the appellant and Shri P.K. Dubey learned Superintendent on behalf of revenue, we note that demand of service tax of Rs.9,00,713/- stands confirmed against the appellant in respect of two services provided by the appellant. Demand of Rs.5,39,597/- stands confirmed in respect of construction of 'Electric Substation cum

SDO Office" for Noida and demand of service tax of Rs.3,61,115/- stands confirmed against the appellant in respect of construction of 20 Meter high fencing Golf Course. Insofar as, demand of service tax on construction of 'Electric Substation cum SDO Office" is concern the issue is no more res-integra and stands decided in appellants own case by this Tribunal through Final Order No.70381/2019 dated 21.02.2019 wherein it was held by relying on the Tribunal's decision in the case of M/s Kedar Constructions Vs Commissioner of Central Excise, Kohlapur reported at 2014 (11) TMI 336 (CESTAT-Mum) that the appellant was not liable to pay service tax in respect of construction of electric substation. By following our earlier decision, we set aside confirmation of service tax of Rs.5,39,597/- along with interest on the same and equal penalty.

2. Insofar as, the demand on fencing is concern, the appellant has submitted that the same is covered under 'Works Contract Service' whereas the same was held to be classifiable under 'Commercial & Industrial Construction Service' through the impugned order. We note that the issue was dealt with by learned Original Adjudicating Authority in para-6.33 of impugned order wherein it was held that the said activity did not get covered by 'works contract' in the absence of payment of VAT. We, therefore, do not interfere with the finding of Original Adjudicating Authority in respect of construction of fencing. Therefore, we hold that the impugned order is sustainable,

insofar as, service tax along with interest and penalty is concern in respect of construction of 20 Meter high fencing.

3. In above terms, appeal is partially allowed and partially rejected.

(Pronounced in open court on-26 July, 2019)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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