CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No. 71128 of 2018

(Arising out of Order-in-Appeal No.NOIDA/EXCUS/002/APP/2014/2017-18 dated 28/03/2018 passed by Commissioner (Appeals), Central Tax, Noida

Commissioner of Central Tax,

GST and Central Excise .....**Appellant**

(Gautam Budhh Nagar, U.P.-201306)

VERSUS

M/s Anmol Bakers Pvt. Ltd., ...**Respondent**

(38-A, Udyog Vihar, Greater Noida-201306)

APPEARANCE:

Shri Shiv Pratap Singh, Authorized Representative for Appellant
Shri Ankit Kanodia, Chartered Accountant for Respondent

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

FINAL ORDER NO.71608 / 2019

DATE OF HEARING : 21 August, 2019
DATE OF DECISION : 21 August, 2019

ARCHANA WADHWA

Being aggrieved with the order passed by the Commissioner (Appeals) vide which he has rejected the Revenue's appeal and upheld the order passed by the Assistant Commissioner, Revenue has further filed the present appeal.

2. After hearing both the sides duly represented by learned Authorized Representative Shri Shiv Pratap Singh appearing on behalf of the Appellant and learned Chartered Accountant Shri Ankit Kanodia appearing on behalf of the Respondent, I find that the respondent was engaged in the manufacture and sale of biscuits falling under Chapter 19 of the Central Excise

Tariff Act, 1985. They filed a refund claim of Rs.42,31,391/- on 30 March, 2016 claiming refund of service tax paid by them during the period 01 April, 2015 to 30 November, 2015. The said claim was made on the ground that during the period in question they have inadvertedly paid the service tax under the category of 'Manpower Recruitment/Supply Agency Service' under reverse charge mechanism whereas the services obtained by them from the job workers was not falling under the said category.

3. The Original Adjudicating Authority took up the said refund claim for examination and found that inasmuch as the services of the job workers was for packing of the biscuits in the assesses factory and consideration of the same was being paid to them on Kilogram basis, the said services were not falling under category of 'Manpower Recruitment' as the same amounted to manufacture and were exempted in terms of Section 66D(f) of the negative list and Rule 2(g) of the Service Tax Rules, inserted w.e.f. 01 July, 2012. Accordingly, after verifying all the documents he sanctioned all the refund claims.

4. Being aggrieved with the said order, Revenue filed an appeal before Commissioner (Appeals). The Appellate Authority took into consideration the Order-In-Original passed by Commissioner in respect of the other factory of same assessee vide which service tax demand was raised on the same facts and it was held that inasmuch as the activity of the job worker amounted to manufacture and production of the goods, no service tax liability would fall upon the assessee. As such, he observed that on detailed investigation the issue of applicability of service tax stands decided by the Commissioner taking into account the nature of agreement/contract and the services being provided to the appellant. Accordingly, he held that the process carried on for

the package of biscuits in carton boxes is a process of manufacture and as such was covered by negative list and there was no requirement of payment of service tax. Accordingly, he held that the refund claim filed by the appellant was properly sanctioned. Revenue's appeal was, accordingly, rejected.

5. Being aggrieved with the said order of the Commissioner (Appeals), Revenue has further filed the present appeal before the Tribunal raising the same very contentions which were raised before Commissioner (Appeals). We note that Commissioner (Appeals) has relied upon an order of the Commissioner vide which under the same set of facts and circumstances, in respect of the same assessee's other unit, service tax demand of Rs.2.55 crores (Approx) stands dropped by observing that there was no service being received by the assessee. As such we find no infirmity in the impugned order of Commissioner (Appeals) and no justifiable reason to accept the Revenue's appeal. The same is accordingly rejected.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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