CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No. 70572 of 2016

(Arising out of Order-in-Appeal No.145/ST/Alld/2015 dated 28/08/2015 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Allahabad)

M/s Prakash Engineering Works **.....Appellant**

(B-6 EPI Colony, Anpara, Sonebhadra U.P.)

VERSUS

Commissioner of Central Excise &

Service Tax, Allahabad **.....Respondent**

(38 M.G. Marg, Allahabad U.P.)

APPEARANCE:

Absent for Appellant
Shri Sandeep Kumar Singh, Authorized Representative for Respondent

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

FINAL ORDER NO. 71610 / 2019

DATE OF HEARING : 20 August, 2019
DATE OF DECISION :20 August, 2019

ARCHANA WADHWA

Nobody appeared. Accordingly, we have heard learned Authorized Representative, Shri Sandeep Kumar Singh appearing on behalf of the Revenue and have gone through the impugned order.

2. As per facts on record the appellant entered into a contract with M/s Anpara Thermal Power Corporation,

Anpara for 'Maintenance & Repair Service'. They were registered with the Service Tax Department under the said category and were discharging their tax liability and were also filing ST-3 Returns.

3. On an information received from M/s Anpara Thermal Power Corporation, it was found that they have suppressed the gross value of the services and accordingly have paid short service tax to the extent of Rs.2,89,115/-. Accordingly, they were issued a show cause notice to confirm the demand of Rs.1,25,309/- for the period 2006-07 to 2010-11. Subsequently, by way of issuance of a corrigendum dated 06 June, 2012, the demand was enhanced to Rs.2,89,115/-. The Original Adjudicating Authority confirmed the same along with interest and imposition of penalty etc.

4. On appeal, Commissioner (Appeals) agreed with the appellant to the extent that corrigendum issued on 06 June, 2012 was even after expiry of 6(Six) years which is time barred and accordingly set aside the demand of Rs.1,63,806/-. However, he confirmed the balance demand of Rs.1,25,309/- along with interest and penalty of identical amount. Hence the present appeal.

5. It is seen that the entire case of the Revenue is based upon the consideration figures of the services provided by the appellant, which they have collected from M/s Anpara Thermal Power Corporation. The appellant's contention before the Authorities below was that the entire contract was inclusive of the cost of the material which cost is not required to be added in the assessable value of the services. They had further submitted that they were filing requisite ST-3 Returns regularly, in which case no mala fide

can be attributed to them and the extended period cannot be invoked.

6. We find that an identical exercise was taken up by the Revenue in respect of other service providers to M/s Anpara Thermal Power Corporation and the demands were confirmed against the other assesses. Their appeals were taken up by the Tribunal and it was held that extended period was not available for confirmation of demand. As a part of the demand was falling within the limitation period the matter was remanded with liberty to the appellant to raise the issue of demand of VAT in respect of the demands falling within the normal period. However, penalties imposed upon those assesses were set aside. Reference can be made to the Tribunal's Order in the case of M/s Manoj Jain (Prop. Manoj Jain) V/s Commissioner of Central Excise & Service Tax, Allahabad vide Final Order No.70338/2019 dated 19 February, 2019. Whereas the earlier order of the Tribunal in the same set of facts and circumstances was followed and it was observed as under:-

> *"6. We note that an identical issue was the subject matter of the Tribunal Final Order No.71839-71842/2018 dated 06/08/2018 wherein identical services were being provided to another Thermal Power Station, Tribunal in the said order observed as under:-*
>
> *"5. After hearing the ld.AR we find that admittedly the demands stand confirmed by invoking the longer period. The appellant were duly registered with the department and were filing the ST-3 returns by showing payment of Service Tax on the value of the services as indicated in the contracts entered by them with the said Public Sector Undertaking. In such a scenario we are of the view that the appellant was entertaining a bona fide belief and there was no mala fide on their part so as to justifiably invoke the longer period of limitation. Accordingly we hold that extended period is not available to the Revenue. However, as a part of demand falls within the limitation period we direct the adjudicating authority to re-quantify the demands against all the appellants for which purpose, the matter is remanded to him.*

> *6. As we have already concluded that there was no mala fide on the part of the assessees we find no reasons to uphold the penalties imposed upon them. Accordingly, the same are set aside."*
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> *7. In view of the above, we hold the demand to be barred on limitation and remand the matter to Original Adjudicating Authority to re-quantify the demand falling within the limitation period, if any. The appellant is also at liberty to raise the issue of payment of VAT in respect of the demand falling within the normal period. Further in view of the above order penalty imposed upon the appellant is set aside in toto."*

7. By following the above decision of the Tribunal, we set aside the impugned order and remand the matter to the Original Adjudicating Authority only for quantification of the demand falling within the limitation period after extending the benefit of payment of VAT if any.

8. Appeal is disposed of in above terms.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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