CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.55724 of 2013

(Arising out of Order-in-Original No.15/Commr./LKO/ST/2012-13 dated 11/10/2012 passed by Commissioner, Central Excise & Service Tax, Lucknow)

Commissioner, Central Excise, Lucknow .....Appellant

(7A, Ashok Marg, Lucknow-226001)

VERSUS

M/s Globe Private Detective Bureau .....Respondent

(C-19, Vibhuti Khand, Gomti Nagar, Lucknow)

APPEARANCE:

Shri Rajeev Ranjan, Authorized Representative for Appellant
Shri A.P. Mathur, Advocate & Shri Dushyant Kumar, Consultant, for Respondent

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

DATE OF HEARING : 01 August, 2019
DATE OF DECISION : 01 August, 2019

FINAL ORDER NO. **71664 / 2019**

ARCHANA WADHWA

Being aggrieved with the order passed by Commissioner vide which he has dropped a part of the demand raised against the respondents, Revenue has filed the present appeal.

2. After hearing both the sides, we find that demand of service tax was raised against the assessee in respect of 'Security Agency Services' and 'Manpower Recruitment or Supply Services'. During the course of adjudication, the

appellant took a categorical stand that they were also engaged in sale/purchase of building material and as such the value of the same cannot be considered as assessable value of the service being provided by them. In support they produced the assessment orders passed by the Joint Commissioner, Corporate Circular, Commercial Tax, Lucknow for the year 2006-07 to 2009-10. For the period 2010-11 they produced sales invoices and contended that inasmuch as the assessment for the said period has not been finalized by the said Commercial Tax Department they are unable to produce the assessment order. In support of their plea, sales invoices as also Charter Accountant's Certificate was produced.

3. The Adjudicating Authority accepted the said stand of the assessee and dropped demand of Rs.50,43,825/-. However, the demand of service tax to the tune of Rs.49,21,872/- was confirmed by him along with imposition of penalty etc. It may be noted here that the assessee also challenged the said order of Commissioner before the Tribunal and their appeal stands dismissed for non-prosecution vide Tribunal Final Order No.72595/2018 dated 14 November, 2018. Learned advocate appearing for the assessee accepts that no restoration application stands filed by the assessee in respect of their appeals dismissal.

4. Accordingly, we proceed to decide the present appeal of the Revenue. The short question is as to whether the assessee is liable to pay service tax on the sale/purchase of building materials on which they have paid the VAT. The Adjudicating Authority has referred to Tribunal's order in the case of Idea Mobile Communications Ltd. V/s Commissioner of Central Excise, Trivandrum reported as 2006 (4) S.T.R. 132 (Tri.-Bang.) as also Hon'ble Supreme

Court decision in the case of Bharat Sanchar Nigam Ltd. V/s Union of India reported as 2006 (2) S.T.R. 161 (S.C.). There is no dispute about the fact that if the sales tax stand paid on any transaction, the transaction has to be held as sales of goods and not involving any service so as to attract the service tax.

The Revenue in their memo of appeal have contended that since the entire income was reflected in the balance sheet of the assessee as income from security agency services and there was no mention of sale/purchase of material, it cannot be held that the appellant was doing sale of the building material. However, we find that the assessee, in support of its contention has produced assessment order of Commercial Sales Tax Department, which being the government authorities' orders have to be given preference then the entries made in the balance sheet by the assessee himself.

However, we note that there is dispute in respect of the figures of sale/purchase income. The Adjudicating Authority, instead of accepting the figures as reflected in the assessment orders of the Sales Tax Department, has picked up the sales figures as projected by the assessee and supported by Chartered Accountant's Certificate. We are of the view that if the appellant has undertaken the sale/purchase of building material, the quantum of the same is required to be reflected by them before the Commercial Sales Tax Authorities and it is only that quantum which is required to be adopted for not confirming the service tax. Further, for the period 2010-11, the assessment for Commercial Sales Tax Authorities had not been completed by that time and Adjudicating Authority has simplicitorly picked figures from the sales invoice of the assessee as supported by Chartered Accountant's Certificate. Inasmuch as the assessment year was 2010-11, we are of the view that the assessment of the same must have been finalized by the Sales Tax Authorities by now. It is the quantum of purchase and sale of the building material which stands reflected by the assessee in their returns before the VAT Authorities which is required to be adopted for the said purpose.

5. In view of the above, we set aside the impugned order and remand the matter to Adjudicating Authority for examination of the sale figures as reflected by the assessee in their Sales Tax Returns and as accepted by the assessing officer in the sale tax assessment orders. The assessee will also produce the assessment order for the subsequent year 2010-11 before the Adjudicating Authority. With these directions, we set aside the impugned order and remand the matter to the Adjudicating Authority for fresh consideration.

6. Revenue's appeal is disposed of in above manner.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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