CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 70689 of 2017-[DB]

(Arising out of Order-in-Appeal No.267/ST/APPL/ALLD/2014 dated 15/02/2017 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Lucknow)

M/s Niraj Construction, ...**Appellant**

(I-T-38, Anpara Colony, Anpara, Sonebhadra)

VERSUS

Commissioner of Central Excise, ...**Respondent**

(Allahabad)

APPEARANCE:

Shri S.B. Shukla, Advocate for the Appellant
Shri Rajeev Ranjan, Additional Commissioner, Authorised Representative for the Respondent

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

FINAL ORDER NO-71731 / 2019

DATE OF HEARING : 05 September, 2019
DATE OF DECISION : 05 September, 2019

PER: ARCHANA WADHWA

After rejecting the request for adjournment, we proceed to decide the appeal itself, inasmuch as, a short issue is involved. The appellant is registered with Service Tax Department under the category of 'Maintenance and Repair Services' which are primarily being supplied by them to M/s Anpara Thermal Power

Corporation. They were discharging their service tax liability and were duly filing the ST-3 returns.

2. The revenue procured the payment figures to the appellant from M/s Anpara Thermal Power Corporation and found that they have received certain considerations for the services provided by the appellant to the said corporation during the period from 2006-07 to 2010-11. By entertaining a view that such consideration was for 'Maintenance and Repair Services' which does not stand reflected by the appellant in their ST-3 returns, demand to Rs.1,92,264/- was raised against the appellant by way of issuance of a show cause notice dated 05.10.2011. The same stands confirmed by the lower authority and upheld by the Commissioner (Appeals). Hence the present appeal.

3. We note that apart from adopting the figures obtained from M/s Anpara Thermal Power Corporation, there is nothing on record to show that such payments were for providing 'Maintenance & Repair Services'. As per the appellant, they were providing various other services like cleaning of toilets etc., to said corporation. In the absence of any evidence to the contrary, it cannot be concluded that the said payments were for 'Maintenance and Repair Services, so as to make appellant liable to differential service tax.

4. Apart from the fact that the revenue has not adverted to any evidence to the said effect, we also note that the demand is barred by limitation the appellant was admittedly discharging its service tax liability, by filing the returns etc. in which case no malafide can be attributed to them specially in the absence of

any evidence to show that he has provided excess Maintenance & Repair Services to corporation.

5. In view of the above, we set aside the impugned order and allow the appeal to the appellant.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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