CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No.70339 of 2019-Division Bench

(Arising out of Order-in-Appeal No.347/ST/ALLD/2018 dated 24/08/2018 passed by Commissioner (Appeals) CGST & Central Excise, Allahabad)

The Commissioner of Central Excise

& Service Tax, Allahabad **.....Appellant**

(Allahabad)

VERSUS

M/s Pragya Pest Control **....Respondent**

(5-B, S.P. Marg, Civil Lines, Allahabad)

APPEARANCE:

Shri Pawan Kumar Singh, Authorised Representative for the Appellant
Shri Nishant Mishra, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. - 71732 / 2019

Date of Hearing : 02 September, 2019
Date of Decision : 02 September, 2019

PER: ARCHANA WADHWA

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

2. As per facts on record, the respondents is proprietorship firm and is registered with the Service Tax Department for providing services falling under the category of 'Business

Auxiliary Service' and 'Works Contract Service' to various Governmental Authorities.

3. As a result of information received by the Revenue and on scrutiny of balance sheet, Profit & Loss Account, Form-26AS and works order/bills, they were issued a show cause notice dated 19/04/2017 under proviso to Section 73(1) of Finance Act, proposing to demand service tax of Rs.80,45,016/- for the period October, 2011 to 2014-15, on the ground that services provided by respondent falls under the category of 'Cleaning Services'. Respondent filed detailed reply stating that works contract & business auxiliary services (civil works, anti-termite and pest-control) services were provided primarily to Rajiv Gandhi Institute of Petroleum Technology, MNNIT, MLN Medical College, IIIT Allahabad, Railways etc., which are not covered by the definition of 'cleaning activity', but are exempted under Notification No.25/12-ST dated 25.06.2012. In the alternative it was also submitted that the services to educational institution are also exempted under SI. No.9 of Notification No.25/12-ST dated 20.06.2012.

4. Show cause notice was adjudicated vide Order-in-Original No.(ST-19/17)08 dated 28/03/2018 and it was held that the services provided by assessee to MNNIT, MLNMC, IIIT and RGIPT are exempted under SI. No.12 of Notification No.25/2012-ST dated 20/06/2012. Adjudicating Authority further held that such services are also exempted under SI. No.9 of Notification No.25/2012. However, Adjudicating Authority confirmed service tax demand of Rs.1,38,877/- only.

A. The said order of the Original Adjudicating Authority was appealed against by the Revenue before Commissioner (Appeals). The Appellate Authority upheld the adjudication order on the ground that there is a specific finding that MNNIT, MLNMC, IIIT and RGIPT were 'governmental authorities' as they were set up by Acts of Parliament and State Legislature and the said finding has not been controverted by Revenue in appeal. Hence the present appeal filed by the Revenue.

5. On going through the impugned order, we find that both the authorities below have given a specific finding that MNNIT, MLNMC, IIIT and RGIPT were 'governmental authorities' as they were set up by Acts of Parliament and State Legislature and the said finding has not been controverted by Revenue in appeal. The Commissioner (Appeals) has given a detailed finding on all the aspects and Revenue has not raised any ground to interfere in the impugned order of the authorities below. We also note that the Commissioner (Appeals) has relied upon the Hon'ble Patna High Court decision in the case of Shapoorji Paloonji & Company Pvt. Ltd. vs. CCE, Patna 2016 (42) S.T.R. 681 (Pat.) and Hon'ble Punjab & Haryana High Court in the case of Bharat Bhushan Gupta & Company vs. State of Haryana 2016 (44) S.T.R. 195 (P & H).

Revenue's ground is that the said decision of the Hon'ble Patna High Court stands challenged by them before the Hon'ble Apex Court. However, we note that there is no stay of operation of the said order and as such the same still holds the fields. In view of the same, we find no justifiable reasons to interfere in the impugned order of the authorities below. Accordingly, the appeal filed by the Revenue is rejected.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

Lks