CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No. 70804 of 2018

(Arising out of Order-in-Appeal No. 164-ST/APPL/KNP/ADG/NGCIN/2017-18 dated 17/04/2018 passed by Additional Director General, National Academy of Customs, Indirect Taxes and Narcotics (ZTI), Kanpur)

M/s Green Earth **.....Appellant**

(Plot No. 135, R.K. Puram,

Naya Sheoli Road, Kalyanpur, Kanpur, U.P.)

VERSUS

The Commissioner, Customs,

Central Excise & Service Tax, Kanpur **.....Respondent**

(117/7, Sarvodaya Nagar, Kanpur, U.P.)

APPEARANCE:

Shri Ravi Holani, Advocate for Appellant
Shri Shiv Pratap Singh, Authorized Representative for Respondent

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

FINAL ORDER NO. 71757 / 2019

DATE OF HEARING: 06 September, 2019
DATE OF DECISION: 06 September, 2019

ARCHANA WADHWA

Service tax of Rs.1,19,884/- stands confirmed against the appellant under the category of 'Maintenance & Repair Service', on the finding that in terms of the work order as entered by the appellant with M/s Indian Institute of Technology, Kanpur, they were to maintain the cricket ground, basketball court, Volleyball court alongwith maintenance of toilets, rooms, parking etc. The said demand stands confirmed by way of issuance of show cause notice dated 21 October, 2015 for the period June, 2010 to May, 2011.

2. It is seen that originally demand was raised for the contract entered into by the appellant with IIT, Kanpur and others. Commissioner (Appeals) has observed that inasmuch as activities in respect of other contracts were horticulture activity which were not liable to service tax, dropped the demand. Apart from contesting the present demand on merits, learned advocate has also assailed the same on the point of imitation by submitting that the issue involved is *bona fide* issue and in the absence of any evidences of *mala fide* of the appellant longer period was not available to the Revenue.

3. We find that Commissioner (Appeals) while reducing the penalty to 50% in terms of provisions of Section 78 has observed that in the show cause notice there is no allegation of any income unaccounted in records. This leads to the fact that the appellant was maintaining proper records and was reflecting all the activities in their account books. For the same very reason adopted by Commissioner (Appeals) for reduction in quantum of penalty, we hold that the longer period would not be available to the Revenue. Accordingly, demand is set aside along with setting aside of the penalty on the point of limitation itself. Appeal is thus allowed with consequential relief to the appellant

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

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