CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Service Tax Appeal No.70908 of 2018

(Arising out of Order-in-Appeal No.181-ST/APPL/LKO/2018 dated 05/03/2018 passed by Commissioner (Appeals), Customs, GST & Central Excise, Lucknow)

M/s Kisan Sahkari Chini Mills Ltd. **.....Appellant**

(Tilhar, Distt. Shahjahanpur, U.P.-242307)

VERSUS

Commissioner of Central Excise

& Service Tax, Lucknow **.....Respondent**

(7 A Ashok Marg Lucknow)

APPEARANCE:

Shri Shambhu Chopra, 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.71864/2019

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

ARCHANA WADHWA

Demand of service tax to the extent of Rs.2,23,509/- stands confirmed against the appellant for the period 2012-2015 under the category of "works contract services" received by them inasmuch as they were liable to pay service tax under reverse charge mechanism.

2. The appellant's only contention is that demands stand raised by invoking the longer period of limitation vide show cause notice dated 07.12.2015. Inasmuch as the appellant

is a co-operative body and was also entitled to claim the credit of the service tax so paid by them, there cannot be any *mala fide* on their part so as to invoke the longer period of limitation. As such, he assails the impugned demand on limitation and submits that he is not disputing the quantum of demand within the limitation period and has actually paid so.

3. After hearing the learned A.R. we find that no reason for the Lower Authorities to invoke the extended period. The only reasoning of the Lower Authorities is that they have not reflected the said fact into their statutory records. However, the said reasoning of the Lower Authorities cannot be appreciated inasmuch as it is the presence of *mala fide,* which is the relevant factor for invoking the longer period. There being no evidence to reflect upon the appellant's intention to evade payment of duty and the availability of the Cenvat Credit of service tax so paid by them, lead us to conclude that there is no suppression or mis-statement on the part of the assessee, so as to invoke the longer period. Accordingly, the impugned order is set aside on this ground itself by setting aside the demand beyond the period of limitation as also the full quantum of penalty imposed upon them.

(Dictated and Pronounced in open Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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

akarshak