CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 11.09. 2017
Date of decision: 22.09.2017

S. T. Appeal No. 53087 of 2014

(Arising out of order-in-appeal No. 209(ST)/RPR-I/2013 dated 21.12.2013 passed by the Commissioner (Appeals) Central Excise, Customs & Service Tax, Raipur).

M/s Anand Constructions Appellant

Vs.

CCE, Raipur Respondent

Appearance:

None for the appellant (Written submission)
Dr. Neha Garg, AR for the respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 56691/ 2017

Per: **V. Padmanabhan**:

The appeal is filed against the order-in-appeal No. 209(ST)/RPR-I/2013 dated 21.12.2013 passed by the Commissioner (Appeals) Central Excise, Customs & Service Tax, Raipur.

2. The appellant is engaged as a service provider under the category of site formation, preparation and excavation service. The department noticed while scrutiny of record of M/s SMJ Construction, Raipur that during the period 2008-2009, they have paid an amount of Rs. 9,64,516/- to the appellant, for carrying out

the works “spreading of material”. Department brought the above service under the clutches of service tax and authorities below have confirmed the demand of service tax amounting to Rs. 1,19,215/- alongwith interest and penalties under Finance Act, 1994.

3. With the above background, we heard Dr. Neha Garg, ld. AR for the Revenue and none appeared on behalf of the appellant but they have filed written submission dated 07.09.2017 and requested to decide the issue on the basis of the appellant written submission.

4. In the written submission dated 07.09.2017, the appellant has claimed that the activity undertaken by them does not fall within any of the categories for payment of service tax. However, they have already paid service tax amounting to Rs.1,00,776/- alongiwth interest of Rs. 5508/-. They have further submitted that by granting the benefit of cum tax, the service tax already paid would be sufficient for the demand.

5. We have perused the appeal record. It is on record that the appellant has already paid the service tax amount as above for the consideration received from M/s SMJ Construction, Raipur. We also note that the benefit of cum tax benefit can always be extended by considering the total consideration received as inclusive of tax in cases where service tax has not been separately charged. After extending such a benefit, we are of the view that the tax amount already paid by them covers the service tax demand upheld by the lower authorities; Interest has also been paid. Further, considering the fact that the Revenue has not brought out any specific

evidence to allege suppression on the part of the appellant, we find no justification to uphold the penalty imposed on the appellant.

6. In view of the above, impugned order is set aside only the extent of penalty and appeal partly allowed.

(Pronounced on 22.09.2017).

(Justice (Dr.) Satish Chandra)
President

(V. Padmanabhan)
Member (Technical)

Pant