IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

Appeal No. ST/87585/2015

(Arising out of Order-in-Appeal No. NGP/EXCUS/000/ APP/ 344/15-16 dated 03.09.2015 passed by Commissioner of Central Excise (Appeals), Nasik)

Commissioner of Central Excise, Nashik **Appellant**

Vs.

Dynamic Prestress Project & Service P.Ltd. **Respondent**

Appearance:

Shri O.M. Shivdikar, Asst. Commr (AR) for appellant
for respondent

CORAM:

Hon'ble Mr. S.K.Mohanty, Member (Judicial)
Hon'ble Mr. P. Anjani Kumar, Member (Technical)

Date of Hearing / Decision: 01.02.2019

FINAL ORDER NO. **A/85336/2019**

Per: S.K. Mohanty

Heard learned D.R. for Revenue. None appeared for the respondent, despite notice.

2. Revenue has assailed the impugned order dated 03.09.2015 passed by the Commissioner (Appeals), Service Tax, Nasik on the ground that the equipments/machinery supplied by the respondent to M/s. Khajuraho Builders, pursuant to the agreement dated 16.12.2010 should be categorized as a taxable service, under the head of "Supply of Tangible Goods" service defined under Section 65(105)(zzzzj) of the Finance Act, 1994.

Revenue has contended that right to use and effective control of the equipments were never transferred by the respondent.

3. On perusal of the sample copy of agreement available in the case records, we find that during the disputed period, the equipments were in custody of the user M/s. Khajuraho and such agreement also provides that the applicable rate of CST shall be paid by leasee to the respondent. The terms of contract clearly indicate that the respondent had no control what-so-ever on the uses of the said equipments, once the same had been handed over to the leasee. Thus, considering such transactions as deemed sale, the respondent had discharged appropriate sales tax liability. Hence, we are of the view that the impugned order passed by the learned Commissioner (Appeals), holding that the transactions between the respondent and its clients should not be subjected to levy of service tax under the taxable category of supply of tangible goods service sustains and cannot be interfered with at this juncture.

4. Therefore, we do not find any merits in the appeal filed by Revenue and accordingly, the same is dismissed.

(Order dictated in Court)

(P. Anjani Kumar)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

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