CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH – COURT NO.504

ST Appeal No. 88140 of 2018

(Arising out of Order-in-Appeal No. NGP-1/APPL/94/2017-18 dated 29.03.2018 passed by the Commissioner(Appeal-I) Central Excise, Customs and Service Tax, Nagpur-I)

Align Components Pvt Ltd ....Appellant
Plot No. C-5/8, Five Star Industrial Area,MIDC,
Shendra, Aurangabad

VERSUS

CCE & ST, Aurangabad ....Respondent
N-5... Town Centre, CIDCO
Aurangabad

APPERANCE:

Shri None, Advocate for the Appellant
Shri Mr. S.K.Hatangadi, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. DR. D.M. MISRA MEMBER (JUDICIAL)

FINAL ORDER NO. A/86152 / 2019

Date of Hearing: 17.05.2019
Date of Decision: 17.05.2019

DR. D.M. MISRA:

Heard learned Authorised Representative.

2. This is an appeal filed against order-in-appeal no. NGP-I/APPL/94/2017-18 passed by the Commissioner(Appeal-I) Central Excise, Customs and Service Tax, Nagpur-I).

3. Briefly stated the facts of the case during the relevant period from July 2012 to April 2014, the Appellant had rendered services under taxable category of manpower recruitment and supply

services. They have discharged service tax during the said period and filed necessary ST-3 Return with the department. However, during the course of audit it was noticed that they have short paid service tax of Rs.3,44,955/- during the said period. Show Cause Notice was issued to them on 30.11.2015 for recovery of the said differential service tax with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Agreed by the same order they filed an appeal before the Learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

4. None present for the appellant. The learned advocate had filed a written submission dated 17.05.2019. In the written submission it is indicated that there was no short payment of service tax during the relevant period. The computation made by the department by taking only the debit side, is incorrect. It is submitted that the credit side was not taken into consideration by the department as at the relevant point of time, they could not place all the invoices, bank books etc., in support of the claim before the adjudicating authority. They have enclosed all the relevant evidences with the written submission in support of the claim that there was no short payment of service tax during the said period.

5. Learned Authorised Representative for the Revenue reiterated the findings of the learned Commissioner (Appeals). He submits that since the relevant documents were not placed before the authorities below differential service tax demanded was confirmed. He has no objection for remanding the matter.

6. Ld. AR for the Revenue reiterated the findings of the Ld. Commissioner (Appeals). I have carefully considered the submissions and perused the records. I find that before the authorities below admittedly the appellant could not substantiate the claim that there was no short payment of service tax during the relevant period, as they could not produce the evidences to support the said claim. All the evidences are now enclosed through their written submission dated 17.05.2019. In these circumstances, it is appropriate to remand the matter to the adjudicating authority to consider the evidences now produced and the evidence that would be produced during the course of *de novo* proceedings to ascertain the claim of the appellant that there was no short payment of service tax during the relevant period. All issues are kept open. Appeal is allowed by way of remand to adjudicating authority.

(Operative portion of the order dictated in the Court)

(Dr. D.M. Misra)
Member (Judicial)

sb