CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal Nos. 70451 & 70544 of 2017-[DB]

[In Service Tax Appeal No.70451 of 2017]
(Arising out of Order-in-Original No. 11/COMMR./GZB/2016-17 dated 29/03/2017 passed by Commissioner of Central Excise & Service Tax, Ghaziabad)

M/s Vibhor Vaibhav Infra Pvt. Ltd. .....Service provider

(R-9/242, Kavi Nagar, Ghaziabad)

VERSUS

Commissioner of Central Excise, ...Respondent

(Ghaziabad)

WITH

[In Service Tax Appeal No.70544 of 2017]
(Arising out of Order-in-Original No. 11/COMMR./GZB/2016-17 dated 29/03/2017 passed by Commissioner of Central Excise & Service Tax, Ghaziabad)

Commissioner of Central Excise, ...Service provider
(Ghaziabad)

VERSUS

M/s Vibhor Vaibhav Infra Pvt. Ltd. ....Respondent
(R-9/242, Kavi Nagar, Ghaziabad)

APPEARANCE:

Shri Rajesh Chhibber, Advocate for the Service provider/Service Provider
Shri Pawan Kumar Singh, Superintendent Authorised Representative for the Respondent/Revenue

CORAM: **HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)**
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NOs. 71294-71295 / 2019

Date of Hearing : 05 July, 2019
Date of Decision : 05 July, 2019

PER: ANIL G. SHAKKARWAR

Above stated two appeals are taken together for decision, since both of them are arising out of common impugned Order-in-Original No. 11/COMMR./GZB/2016-17 dated 29/03/2017 passed by Commissioner of Central Excise & Service Tax, Ghaziabad.

2. After hearing both the sides duly represented by Shri Rajesh Chhibber learned Advocate appearing for the service provider and Shri Pawan Kumar Singh learned Superintendent Authorised Representative appearing for Revenue, we note that the service provider were engaged in providing various services related to construction and laying of pipelines and laying of drainage and also 'Works Contract Service' and 'Erection Commission And Installation Service'. They provided services to Ghaziabad Development Authority, U.P. Jal-Nigam and various other Government Authorities. Proceedings were initiated against the service provider for the period from 01.04.2009 to 31.03.2014 by way of issuance of show cause notice dated 20.10.2014 where a demand of around Rs.18 Crores was raised against the service provider for various project undertaken by them and services were provided to above stated Government Authorities. Through the impugned order the learned Original Adjudicating Authority has dealt with separately each and every

work that was taken up by the service provider and given his finding separately for the period prior to 01.07.2012 and subsequent to 01.07.2012. For the period after 01.07.2012 he has examined the activities undertaken by the service provider with reference to serial no.12 & 13 of Notification No.25/2012-ST dated 20.06.2012 which provided exemption to specified services provided to government authorities. Learned Original Adjudicating Authority has separately examined each and every work and held the same to be eligible for exemption from payment of service tax for the period w.e.f. 01.07.2012. In the findings, he has also examined service tax liability on each and every activity for the period prior to 01.07.2012 and relied either on ruling by various Appellate Authorities or CBEC's Circulars or notifications issued in respect of specific services and dropped the demand of around Rs.18 crores. Aggrieved by the said dropping of demand, revenue is in appeal before this Tribunal.

3. Through the same order he has confirmed a demand of service tax of around Rs.65 lakhs and imposed penalty of equal amount under Section 78 of Finance Act, 1994. The service provider is challenging the confirmation of demand of around Rs.65 lakhs along with penalty.

4. After hearing both the sides and on perusal of record, we note that the Original Adjudicating Authority has confirmed the demand of Rs.64,22,925/- on account of construction of 33 and 11 KVA electric substations at Indirapuram, Ghaziabad and imposed equal penalty. Further, he has confirmed service tax

demand of around Rs.1.55 lakhs for construction of Boundary wall and imposed equal penalty. In so for as the demand and penalty in respect of electric Substations is concern, the learned Counsel has relied on earlier decision of this Tribunal in the case of M/s Shiv Shankar Electricals And Contractors Vs Commissioner of Central Excise and Service Tax, Ghaziabad through Final Order No.70141/2019 dated 18.01.2019 wherein it was decided that taking into consideration the exemption provided through Notification No.45/2010-ST dated 20.07.2010 and Notification No.11/2010-ST dated 27.02.2010, the service tax on construction of electric substation is not sustainable. We further note that all services related to transmission of electricity have been covered by negative list after 01.07.2012. We also note that it is settled by now that construction of electric Substation is also related to transmission of electricity. We, therefore, set aside the demand of service tax of Rs.64,22,925/- along with equal penalty. In so for as demand of around Rs.1.55 lakhs is concerned, we note that learned Counsel for service provider has submitted that the services were provided to a trust and the same was exempted. However, they are not in position to establish through record that the services were provided to trust and therefore, they are not contesting the service tax and interest but they are contesting penalty on the same. Taking into consideration the above submissions, we set aside penalty of Rs.1,55,869/- under Section 78 of Finance Act, 1994. In above terms except for the duty of Rs.1,55,869/- and interest thereon entire appeal of service provider is allowed.

5. In so far as revenue appeal is concern, the main ground raised by the revenue is that the Original Adjudicating Authority has not given any finding for the period earlier than 01.07.2012 and also that the Notification No.25/2012-ST was not a blanket notification. On perusal of Order-in-Original, we note that the learned Original Adjudicating Authority has carefully examined each and every contract and given his finding as to how the services provided by the service provider were covered separately for the period prior to 01.07.2012 and subsequent to the period 01.07.2012 through Notification No.25/2012-ST and various decisions of this Tribunal and other Appellate Authorities, Notifications and CBEC's Circulars. Therefore, we do not find any merit in the appeal filed by revenue.

6. Appeal filed by the revenue is rejected.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

akp