CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No.61348 Of 2019

[Arising out of Order-in-Original No.LUD-EXCUS-000-COM-009-19-20 dated 26.08.2019 passed by the Principal Commissioner of CGST, Ludhiana]

M/s Girdhari Lal Construction
Private Limited **: Appellant**
550, Sector-36,
Chandigarh-160036

VERSUS

The Commissioner of Central Excise
And Service Tax, Ludhiana **: Respondent**
GST Bhawan, F-Block, Rishi Nagar,
Ludhiana, Punjab-141001

With
Service Tax Cross Application No.60340 of 2020
Service Tax Appeal No.60004 Of 2020

[Arising out of Order-in-Original No.LUD-EXCUS-000-COM-009-19-20 dated 26.08.2019 passed by the Principal Commissioner of CGST, Ludhiana]

The Commissioner of Central Excise
And Service Tax, Ludhiana **: Appellant (s)**
GST Bhawan, F-Block, Rishi Nagar,
Ludhiana, Punjab-141001

Vs

M/s Girdhari Lal Construction
Private Limited **: Respondent (s)**
550, Sector-36,
Chandigarh-160036

APPEARANCE:
Shri Atul Gupta, Chartered Accountant for the Appellant/Assessee
Shri Siddharth Jaiswal and Shri Shivam Syal, Authorised Representatives for the Respondent/ Revenue

CORAM:
HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.60507-60508/2024

DATE OF HEARING: 23.08.2024
DATE OF DECISION: 04.09.2024
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PER: P. ANJANI KUMAR

The appellants, M/s Girdhari Lal Construction Pvt. Ltd., are registered with service tax for rendering taxable services under "Construction of Residential Complex" Service and "Construction of Commercial and Industrial Complex" Service; the appellants are mainly engaged in undertaking civil construction to Government authorities as the contractor/ sub-contractor. On the basis of the audit conducted by CERA, a Show Cause Notice dated 22.03.2018 was issued to the appellants proposing to recover service tax of Rs.57,79,40,674/- along with interest and penalties invoking extended period; the Show Cause Notice also proposed to deny credit of Rs.38,65,61,280/- under Rule 14 of CENVAT Credit Rules, 2004. Commissioner of CGST, Ludhiana vide Order dated 26.08.2019 confirmed the demand of service tax of Rs.7,80,61,771/- along with interest and equal penalty under Section 78; imposed penalty of Rs.10,000/- under Section 77; dropped the demand of Rs.50,13,88,869/-; confirmed the recovery of CENVAT credit of Rs.1,64,45,999/- along with interest while imposing equal penalty; dropped the demand of Rs.37,01,15,281/- raised under Rule 14 of CENVAT Credit Rules, 2004. Accordingly, the appellants have filed Appeal No. ST/61348/2019 against the demand confirmed against them. Revenue filed Appeal No. ST/60004/2020 against the dropping of demand of Rs.37,01,15,281/-.

2. Shri Atul Gupta, learned Consultant for the appellant, submits that the learned Commissioner held in the impugned order that:

- Valuation at the rate of 40% in terms of Rule 2A(ii) of Service Tax (Determination of Value) Rules, 2006 in respect of contracts with Army Welfare Housing Organization (AWHO) is correct and appellant's claim that as per the contract, only 20% is service portion and 80% is the material portion is not evidenced by documents.
- Projects undertaken for Chandigarh Housing Board, HEWO and CDAO (Nasik) are taxable.
- Projects undertaken for Military Engineering Service, Director General and Unity Infra Project Ltd. were exempt.
- Gross value requires to be taken from 26AS statement as the appellants did not submit any data or copies of the Returns to show the actual figures.
- CENVAT credit of Rs.38,65,61,280/- cannot be asked to be reversed as the CENVAT credit actually availed by the appellants was only Rs.1,64,45,999/- and that in terms of Rule 6(4) of CENVAT Credit Rules, no reversal of CENVAT credit availed on capital goods is required.

3. Learned Consultant puts forth elaborate submissions and submits written submissions also. He submits that the main issue as to whether AWHO is a public/ Government authority was not clear; whereas Hon'ble Delhi High Court has decided the issue in favour of the appellants in the case of Brij Bhusan Gupta- MANU-DE/0032/1990 but reversed the same in the case of AWHO in LPA No.467/2013; therefore, the appellant had reasons to believe that the services rendered to AWHO were not leviable to service tax during the relevant

time. Moreover, he submits that the issue arose out of an audit objection and the data has been taken on the basis of 26AS statement and therefore, extended period cannot be invoked. He further submits that demand for the period April to June 2012 for Rs.18,06,10,853/- is beyond the period of five years also. He relies on the following cases:

- Central India Engineering Co. – 2016 (44) STR 657.
- Khandwala Securities Ltd. – 2015 (40) STR 738.
- Valencia Construction Pvt. Ltd. – 2016 (41) STR 436.
- Satyam Digital Photo Lab- 2012 (27) STR 64
- Asia Polytex (India) Ltd. – 2001 (132) ELT 282 (Tri. Mumbai)

4. The gist of the submissions by the learned Consultant on the merits of the case is as follows:

(i) The contract with AWHO itself says that the material and labour portions of the contract is 80:20; therefore, it was wrong to take recourse to Valuation Rules.

(ii) The appellants have paid Rs.54,35,877/- which is not reflected in ST-3 Returns; allowance cannot be denied for the reason that the tax paid has not been reflected in ST-3 Returns.

(iii) Service tax of Rs.9,69,942/- in respect of work undertaken for CDAO (Nasik) has been paid subsequently and the same has not been considered.

(iv) Service tax of Rs.6,39,090/- on the project undertaken for Chandigarh Housing Board is not payable as the work was related to construction of houses for weaker sections. The appellant can show the evidence to the Adjudicating Authority in case the matter is remanded back.

(v) The appellants have availed very small amount of credit compare to the demand confirmed and for that reason, 06 or 08% of the total value of projects cannot be demanded; the appellants are ready to reverse the entire credit of the duty, along with interest, on the items utilized exclusively for the exempted category, in case the matter is remanded back.

5. Learned Consultant in support of his argument relies on the following cases:

- B.L. Mehta Constructions P Ltd. – 2018 (8) GSTL 92 (Tri. Chan.)
- Girdhari Lal Construction Pvt. Ltd. – 2018 (2) TMI 647-CESTAT Chandigarh.
- Commissioner of C. Ex. & ST., Rajkot v. Reliance Industries Ltd., cited in 2019 (28) G.S.T.L. 96 (Tri. Ahmd.)
- E-Connect Solutions (P) Ltd. v. Commr. of C. Ex. & CGST, Udaipur, cited in 2021 (376) E.L.T. 678 (Tri. - Del.)
- IBM India Pvt. Ltd. v. Commr. of C. Ex., Customs & Service Tax.
- Bangalore LTU, bearing Appeal No. ST/20741/2014-DB (Bangalore CESTAT)
- Cranes & Structural Engineers v. Commr. of C. Ex., Bangalore - I reported at 2017 (347) E.L.T. 112 (Tri. - Bang.)
- Aster Pvt. Ltd. v. Commissioner of Customs & C. Ex., Hyderabad - III reported at 2016 (43) S.T.R. 411 (Tri. - Hyd.)
- Tiara Advertising v. Union of India, cited in 2019 (30) G.S.T.L. 474 (Telangana)

6. Shri Siddharth Jaiswal, assisted by Shri Shivam Syal, learned Authorized Representatives, reiterates the findings of the OIO in respect of the appeal filed by the M/s Girdhari Lal Construction Pvt. Ltd. and the grounds of appeal in respect of appeal filed by the Revenue. He further submits that:

(i) Appellants claim that Rs.54,35,877/- was paid but not reflected in Returns is incorrect as the challan showing the above payment has an endorsement to the effect that the amount paid in excess will be adjusted towards the tax liability from 01.04.2016 onwards.

(ii) The appellants claim that the period April to June 2012 is beyond limitation is devoid of merit as the appellants could not produce any documentary evidence for filing of the Return.

(iii) The claim of the appellant regarding the contract with AWHO that the material component is 80% and labour is only 20% is incorrect as in terms of Rule 2A of the Service Tax (Determination of Value) Rules, 2006, there are only two options; the taxable value shall either be less the value of the property in goods transferred or 40% of the gross value; though the appellant claims that they have paid VAT, no documentary co-relation to show that the VAT claimed in respect of the AWHO contracts has been paid.

(iv) The appellants could not show any documentary evidence regarding the work provided to Chandigarh Housing Board in respect of houses to weaker sections.

(v) The Adjudicating Authority had no means to verify the claim of the appellant that service tax in respect of project of CDAO (Nasik) has been paid in the subsequent period.

(vi) The appellants request for proportionate reversal of credit has no statutory backing.

(vii) Extended period is rightly invocable as the appellants did not pay service tax, did not provide documents and did not respond to various summons.

7. The Department relies on the following cases:

- Hari Chand Shri Gopal – 2010 (260) ELT 3 (SC).
- RSWM – 2009 (238) ELT 3 (SC).
- Aircel Digilink India Ltd. – 2006 (3) STR 386 (Tri. Del.)
- Bharti Cellular Ltd. – 2006 (3) STR 423 (Tri. Del.)
- Andhra Pradesh State Electricity Board – 1984 (16) ELT 579.

8. Heard both sides and perused the records of the case. The Show Cause Notice is apparently based on the findings of CERA audit on the accounts of the appellants; for the reason that the appellant has not submitted any documents; the demand has been raised on the basis of 26AS record. We find that during the impugned period, divergent opinion was being taken by the Tribunal and the Courts; no positive act of commission/ omission on the part of the appellants is evidenced to allege suppression of fact, mis-declaration with intent to evade payment of duty so as to invoke extended period. Therefore, we are of the considered opinion that the Revenue has not made out even a weak case for invocation of extended period. We find that the Show Cause Notice issued invoking extended period is not maintainable and therefore, the impugned order passed in pursuant of the same requires to be set aside. We further find that certain portion of the demand is beyond the extended period also. As far as Revenue's appeal is concerned, as the very Show-Cause Notice which is the foundation of the case is liable to be set aside, any appeal filed by Revenue against the dropping of a portion of the demand will also not succeed. As we hold that the appeal filed by M/s Girdhari Lal Construction Pvt. Ltd. squarely succeeds on limitation, we are not inclined to go into the merits of the case.

9. In view of the above, Appeal No. ST/61348/2019 filed by M/s Girdhari Lal Construction Pvt. Ltd. is allowed on limitation and Appeal No.ST/60004/2020 is dismissed. Cross objection filed by the Department also stands disposed of accordingly.

(Order pronounced in the open court on 04/09/2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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