CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I (SM)

Service Tax Appeal No. 60349 of 2023

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-LDH-47-2022-23 dated 27.02.2023 passed by the Commissioner (Appeals), CGST, Chandigarh]

M/s R. S. Builders And Engineers Ltd ......**Appellant**
SCO 19, 5th Floor, Feroze Gandhi Market,
Ludhiana, Punjab 141001

VERSUS

Commissioner of Central Excise and Central Goods & Service Tax, Chandigarh ......**Respondent**
Plot No. 19, C R Building,
Sector 17C, Chandigarh 160017

APPEARANCE:

Shri R. R. Yadav, Consultant for the Appellant

Shri Raman Mittal, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO. 60621/2024

DATE OF HEARING: 26.11.2024
DATE OF DECISION: 26.11.2024

The present appeal is directed against the impugned order dated 27.02.2023 passed by the Commissioner (Appeals), CGST, Chandigarh, whereby the learned Commissioner (Appeals) has rejected the appeal of the appellant by upholding the Order-in-Original.

2. Briefly stated facts of the present case are that the appellant was engaged in providing taxable services of Construction Services in respect of Commercial or Industrial Building and Civil Structure and was registered with the department under the provisions of Finance Act, 1994 as amended. The appellant was discharging service tax liability on construction services after taking 67% abatement in terms of Notification No. 01/2006-ST dated 01.03.2006. During the investigations by the department apart from other detections, it was also found that w.e.f. July, 2012, the appellant was not eligible for abatement at the rate 67% and the appellant was eligible for abatement at the rate 60%; hence, the appellant has short paid the differential service tax of Rs.1,22,563/-. On these allegations, a show cause notice was issued to the appellant for recovery of service tax of Rs.1,22,563/- under Section 73 of the Finance Act, 1994 along with interest under Section 75 of the Act and penalty under Section 76 of the Act was also proposed to be imposed. After following the due process, the Original Authority confirmed the demand of service tax of Rs.1,22.563/- on the excess abatement availed by the appellant under Section 73 of the Finance Act, 1994 along with interest under Section 75 of the Act and penalty under Section 76 was also imposed. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals), who rejected their appeal; hence the present appeal.

3. Heard both the parties and perused the material on record.

4.1 The learned Consultant appearing on behalf of the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and law.

4.2 He further submits that in the present case, the show cause notice was issued on 16.10.2014 whereas the Original Authority passed the Order-in-Original on 22.03.2021 approximately after the expiry of seven years without any cogent reason. He also submits that the long delay of seven years has effectively deprived the appellant to effectively explain their case and has resulted in unnecessary interest liability on the appellant which is in violation of principle of natural justice and therefore should be set aside. For this submission, he relies on the following decisions:

- **CCE, Bolpur vs. Unnayak Prop – 2009 (243) ELT 212 (Tri. Kolkata)**
- **Shirish Harshavadan Shah vs. Deputy Director E.D., Mumbai – 2010 (254) ELT 259 (Bom.)**

4.3 He further submits that the appellant has fulfilled all the conditions specified in Notification No. 01/2006-ST dated 01.03.2006 and it is not disputed by the department. As per the said notification, a service provider providing taxable service in relation to commercial or industrial constructions service to any person has the option to avail abatement in service tax upto 67% and pay only service tax on 33% of the gross amount charged from any person by such service provider for providing such taxable service, provided the service provider satisfies the following conditions:

a) The service provider has not availed Cenvat Credit on the inputs or capital goods;
b) The service provider has not availed Cenvat Credit on service tax on input services used for providing the service;
c) The service provider has not availed the exemption benefit under Notification No. 12/2003-ST dated 20.06.2003 in respect of the value of goods and materials sold during the course of providing the service;
d) The gross amount charged includes the value of goods and material supplied or provided or used by the service provider for providing the service.

4.4 He further submits that there is no allegation by the department that the appellant has violated any of the conditions cited above and further the returns filed by the appellant clearly shows that the appellant has not availed Cenvat Credit of duty or service tax paid on inputs, capital goods and input services. For this submission, he relies on the following decision:

- **Bharat Heavy Electricals Ltd vs. CCE, Nagpur – 2014 (34) STR 430 (Tri. Mumbai)**

4.5 He further submits that for availing the composition scheme under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, the assessee has to specifically give the option for the same in terms of Rule 3 of the said Rules, whereas in the present case, the appellant has not opted for the said scheme and therefore was eligible to avail the benefit under Notification No.

01/2006 subject to the fulfillment of the conditions enshrined therein.

5. On the other hand, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order and submits that as per the composition scheme cited supra, the assessee can only claim abatement to the tune of 60% and is required to pay service tax on 40% of the gross amount charged, whereas in the present case, the appellant has availed abatement to the tune of 67% and therefore is liable to differential duty.

6. After considering the submissions made by both the parties and perusal of the material on record, I find that in this case, the period of dispute 2008-09 to 2010-11 and show cause notice was issued on 16.10.2014 whereas the Order-in-Original was passed on 22.03.2021 approximately after the expiry of seven years and there has been no correspondence from the department at all for a period of seven years; the department has not been able to give any cogent reason for such a delay in adjudication; the delay in adjudication has resulted in lapsing of other benefits of the appellant and has increased unnecessary interest liability on the appellant; therefore, the impugned order in first instance is violative of the principle of natural justice and is liable to be set aside as held in the cases of **Unnayak Prop.** (supra) and **Shirish Harshvadan Shah** (supra).

7. Further, I find that the appellant has opted for the abatement scheme provided in Notification No. 01/2006-ST dated 01.03.2006

and has fulfilled all the conditions specified in the said notification and there is no dispute in this regard. Once the appellant has opted for the benefit of that notification and admittedly the said notification has not been withdrawn even after framing the composition scheme under the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. Further, under the composition scheme, the appellant was required to give option for the same in terms of Rule 3 of the said Rules, whereas, in the present case, the appellant has not opted for the said scheme and continued to avail the benefit under Notification No. 01/2006 after fulfilling all the conditions prescribed therein.

8. Further, I find that the decision of the Tribunal in the case of **Bharat Heavy Electricals Ltd** (supra) is applicable in the present case and benefit of the Notification No. 01/2006 cannot be denied to the appellant once they fulfilled the conditions of the same.

9. In view of my discussion above, I am of the considered opinion that the denial of benefit of Notification No. 01/2006-ST dated 01.03.2006 is bad in law; therefore I set aside the impugned order and allow the appeal of the appellant with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

RA_Saifi