IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Service Tax Appeal No.41067 of 2014

(Arising out of Order in Original No. 3/2014 (ST) Commissioner dated 14.2.2014 passed by the Commissioner of Central Excise, Chennai)

V. Sathyamoorthy and Co. **Appellant**
40D Surya Garden
Trichy Road, Namakkal
Salem – 637 001.

Vs.

Commissioner of GST & Central Excise **Respondent**
No. 1, Foulkes Compound
Anaimedu, Salem – 636 001.

APPEARANCE:

Shri G. Natarajan, Advocate for the Appellant
Shri N. Satyanarayanan, AC (AR) for the Respondent

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Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri K. Anpazhakan, Member (Technical)

Final Order No. 40101/2024

Date of Hearing : 30.01.2024
Date of Decision: 31.01.2024

Per K. Anpazhakan,

The present appeal has been filed against the impugned Order in Original No.3/2014 (ST) dated 14.2.2014 passed by the Commissioner, wherein the learned adjudicating authority has confirmed the demand of service tax along with interest and penalty. Aggrieved against the impugned order, the appellant has filed this appeal.

2. Shri G.Natarajan, the learned counsel appeared and argued on behalf of the appellant and submitted that they have rendered taxable service under the following categories: (i) Commercial or Industrial Construction for an amount of Rs.8,306/-, (ii) Construction of Residential Complex to the tune of Rs.2,48,30,949/-, (iii)

Management, Maintenance or Repair for an amount of Rs.8,376/- and (iv) Works Contract Service for an amount of Rs.5,23,24,146/-. They have not paid appropriate service tax on the gross amount received by them for rendering the services. Accordingly, Show Cause Notice dated 19.10.2011 was issued. After due process, the impugned order was passed confirming the demand raised in the Show Cause Notice.

3. He submits that the demand for the period from April 2006 to March 2011 has been confirmed under the category of Construction of Commercial Complex Service. During this period, they have rendered services under a 'composite contract' involving transfer of property in goods. Accordingly, the services rendered by them are rightly classifiable under the category of 'Works Contract Service' and hence the demand confirmed under the 'Construction of Complex Service' is not sustainable. Further, the demand for the financial years 2008 – 09, 2009 – 10, 2009 – 10 and 2010 – 11 has been confirmed under the category of 'Works Contract Service'. He submits that the demand in this case has been made on the whole value without giving any abatement on the ground that the appellant had not opted for the 'Composition Scheme'. Accordingly, he submits that the demand of service tax without giving abatement on the value of transfer of property in goods is not sustainable. Further, he submits that various works undertaken by them are entitled for exemptions from payment of service tax. He cited the example of construction of residential complex for the Tamil Nadu Slum Clearance board which is not liable to service tax as they are meant for allocation of beneficiaries for their personal use. He submits that during the personal hearing before the adjudicating authority, they could not bring all the relevant documents

and claim the exemption which are otherwise eligible to them. Accordingly, he prayed for remanding the matter for denovo adjudication to the adjudicating authority for deciding the matter afresh.

4. The learned AR Shri N. Satyanarayanan has no objection in remanding the matter for denovo adjudication.

5. Heard both the parties and perused the appeal documents.

6. We find that the issue involved is regarding the classification of the services rendered by the appellant. The appellant has classified the services under Construction of Complex Service for the period April 2006 to March 2011. The appellant submits that during the period they have executed 'composite contracts' involving material which are rightly classifiable as works contract service. In view of the decision of the Hon'ble Supreme Court in the case of CCE Vs. L&T Ltd. reported in 2015 (39) STR 913 (SC), the appellant's contention needs to be examined afresh. The appellant also submits that the adjudicating authority has not extended the abatement for the demands confirmed under 'works contract service'. It is their contention that these contracts were also executed with materials and hence they are eligible for abatement. Their submission that some of the contracts executed by them are not liable to service tax also need to be examined along with relevant documents. Thus, we observe that the demand confirmed in the impugned order under construction of complex service and works contract service needs to be examined afresh. Accordingly, we set aside the demands confirmed in the impugned order and remand the matter back to the adjudicating authority for deciding all the issues afresh. The appellant shall submit all the relevant documents before

the adjudicating authority for examining the classification and valuation of the services rendered as well as the eligibility of abatement as claimed by them.

6. In view of the above discussion, the impugned order is set aside and the appeal filed by the appellant is disposed of by way of remand to the adjudicating authority.

(Pronounced in open court on 31.01.2024)

(**K. ANPAZHAKAN**)
Member (Technical)

(**P. DINESHA**)
Member (Judicial)

Rex