CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

COURT HALL - I

Service Tax Appeal No.42273 of 2014

(Arising out of Order-in-Appeal No.137/2014(P)(ST) dated 02.07.2014 passed by Commissioner (Appeals), No.26/1, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034.)

Shri R.Ramadas **...Appellant**
No.306-A, Type II Quarters,
Block-5, Neyveli TS - 607 803,
Cuddalore District.

Vs.

Commissioner of GST & Central Excise **...Respondent**
Puducherry Commissionerate,
No.1, Goubert Avenue, (Beach Road),
Puducherry – 605 001.

APPEARANCE:

Shri R Bharath, Advocate, for the Appellant
Shri Harendra Singh Pal, AC (AR) for the Respondent

CORAM:

Hon'ble Shri P. Dinesha, Member (Judicial)
Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No.40513/2024

Date of Hearing : 07.02.2024
Date of Decision: 01.05.2024

Per P. Dinesha

The period of dispute pertains to the year 2008–09; facts that emanate from the impugned Order-in-Appeal as stated in paragraph 2 of the order are that the appellant had entered into various contracts with M/s.Neyveli Lignite Corporation Ltd., Neyveli, for providing gravel topping and laying laterite along the build road, had received payment towards

Management, Maintenance or Repair services, and Commercial or Industrial Construction services, rendered to M/s.Neyveli Lignite Corporation Ltd., Neyveli but had not remitted the applicable service tax. This prompted the revenue to issue a show-cause notice dated 10.10.2009, proposing to recover the afore-said service tax and, after due process, vide Order-in-Original No.10/2012 (ST) dated 11.12.2012.

2. The proposals in the show cause notice came to be confirmed, against which the taxpayer appears to have preferred an appeal before the First Appellate Authority. After hearing the appellant, the Commissioner (Appeals) per impugned Order-in-Appeal, dismissed the appeal, thereby confirming the Order-in-Original and it is against this order that the present appeal has been filed before this forum.

3. Heard Shri R. Bharath, Advocate, appeared and argued for the appellant, and Shri Harendra Singh Pal, Learned Assistant Commissioner, appeared for the department.

4. It is the case of the appellant that he had entered into various contracts with Neyveli Lignite Corporation Ltd., Neyveli (NLC) for providing gravel

topping and laying laterite along the build road Biennial Maintenance of roads inside mines, but did not receive service tax from Neyveli Lignite Corporation; that Notification No. 24/2009 dated 27.07.2009 exempted the service tax on the alleged services provided with respect to Roads. Further, it is the case that Neyveli Lignite Corporation did not pay any amount of service tax, as mentioned in annexure to the show cause notice and it was informed by Neyveli Lignite Corporation that for road laying works executed by the appellant, the service tax was not applicable up to 30.12.2012.

5. The appellant also relied on various orders of co-ordinate benches wherein, more or less similar issue has been decided in his favour and thus the advocate would pray for setting aside the impugned order and the demand confirmed therein.

6. Per contra, Ld. Assistant Commissioner relied on the findings of the Lower Authorities.

7. Heard both sides.

8. After hearing both sides, we find that the only issue to be decided by us is, "whether the demand of service tax on the appellant is sustainable in the eye of law?". We have heard the rival contentions. We

have also carefully perused the orders of Lower Authorities and we have also gone through the orders relied upon during the course of arguments before us.

9. It is an undisputed fact that the appellant had rendered *inter alia* the services of road construction in private commercial premises of Neyveli Lignite Corporation, and thus claimed the benefit of Notification No.24 *ibid*. The Notification No.24/2009-ST dated 27.7.2009 provides for exemption of service tax on management, maintenance or repair of roads and the new Section 97 introduced vide Finance Act, 2012 gave retrospective amendment to this notification w.e.f/ 16.6.2005. The above said Notification No.24/2009-ST or amendment Notification No.54/2010-ST dated 21.12.2010 and new Section 97 of Finance Act, 2012 does not stated in any place that "the exemption from payment of service tax is only with respect of public utility roads". In this regard, we note that the orders relied upon in the case of **Rajendra Singh Bhamboo Vs CCE & ST Jaipur-I reported in 2019 (22) G.S.T.L 278 (Tri.-Del)** and **NMC Industries Private Ltd Vs CST Mumbai reported in 2020 (43) G.S.T.L 551 (Tri.-Mumbai)** are apt. In the

case of Rajendra Singh supra, it has been held as under:

> "7. On perusal of the above definition, it would reveal that construction of roads is excluded from the purview of such taxable service. The definition of taxable service does not specify the type of roads, whether private or public for the purpose of consideration of such exclusion clause. Since the definition is specific to service provided in respect of road only, in our considered view, it cannot be interpreted that only construction of public roads should get the benefit of exclusion provided in such definition clause. In other words, irrespective of the purpose of construction of the road, whether for public utility or for the utility of organization concerned for their use, the benefit of exclusion clause provided in the definition under [Section] 65(25)(b) of the Act should be available, for non-levy of Service Tax. Since there is no ambiguity in plain reading of the definition and in view of the admitted fact that the appellant had constructed roads for different commercial entities/organization, the benefit of the exclusion provided in the definition clause should be available to it.
>
> **8.** Therefore, the impugned order, confirming the Service Tax demand against the appellant will not stand for judicial scrutiny. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant."

10. Following the judicial discipline and the above ratio, we are also of the view that they demand raised and confirmed against the taxpayer in the case on hand cannot sustain.

11. Resultantly, we set aside the impugned order and allow the appeal with consequential benefits, if any, as per law.

(Pronounced in open court on 01.05.2024)

(**M. AJIT KUMAR**)
Member (Technical)

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

pr