

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. 1

SERVICE TAX APPEAL NO. 51861 OF 2015

[Arising out of the Order-in-Appeal No. 11 (ST)/RPR/2015 dated 07/01/2015
passed by The Commissioner (Appeals), Service Tax, Raipur.]

M/s K.B. Singh (Contractor)
684, Ram Manohar Lohia Ward, Andherdeo,
Jabalpur – 482 002.

...Appellant

Versus

**Commissioner, Customs, Excise
and Service Tax,**
C.R. Building, Napier Town,
Jabalpur –482 002 (M.P.)

...Respondent

APPEARANCE:

Shri Ashish Batra, Advocate for the appellant.
Shri Harshwardhan, Authorized Representative for the
Department

CORAM:

**HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)**

FINAL ORDER NO. 50358 / 2022

**DATE OF HEARING : 07.04.2022
DATE OF DECISION: 22.04.2022**

P.V. SUBBA RAO

This appeal is filed by K.B. Singh¹ assailing the order-in-
appeal dated 07.01.2015 passed by the Commissioner (Appeals),
upholding the order-in-original dated 11.02.2014 passed by the
Deputy Commissioner of Central Excise & Service Tax, Jabalpur,

¹ appellant

whereby he confirmed service tax demand of Rs. 3,02,906/- against the appellant for the period 2007-2008 to 2008-2009 along with interest and imposed penalties under Sections 76, 77 and 78 of the Finance Act.

2. The facts of this case, in brief, are that the appellant is engaged in providing services of “maintenance and repair” and “commercial and industrial construction” and had provided such services to Nagar Palika Garhakota and M/s M.P. Warehousing and Logistics Corporation, Jabalpur and had not taken service tax registration nor paid service tax on the amounts received towards such services. A show cause notice dated 08.04.2010 was issued by the Deputy Commissioner, Central Excise, Jabalpur calling upon the appellant to explain why the service tax should not be recovered under Section 73 and why penalties should not be imposed.

3. The Deputy Commissioner passed the order-in-original dated 11.02.2014 confirming the demand of service tax of Rs. 3,02,906/- along with interest and imposing penalties under Sections 76, 77 and 78 of the Finance Act. This order was upheld by the Commissioner (Appeals) by the impugned order. Hence, this appeal.

4. Learned Counsel of the appellant Shri Ashish Batra does not dispute that the appellant had provided services as alleged and had received consideration for the services. He submits that during the period 2007-2008 an amount of Rs. 13,55,970/- was

received for commercial construction services. An abatement of 67% of this receipt is available to the appellant towards the cost of material. He submits that an amount of Rs. 1,95,722/- was also received by the appellant towards repair and maintenance services during the year. According to him, if the abatement from the amount towards commercial construction services is considered, the value of the total taxable services rendered during 2007-2008 will be only Rs. 6,43,193/-. For the year 2007-2008 the threshold exemption for charging service tax was Rs. 8,00,000/-. Similarly, for the period 2008-2009 he submits that the total amount received for services after abatement will be only Rs. 3,55,419/- which would well below the exemption limit of Rs. 10,00,000/-. He submits the following details :-

FY 2007-2008

Gross Receipt in respect of Commercial Construction Services rendered to Nagar Palika Garhakota	13,55,970
Less : Abatement of 67%	(9,08,499)
Net Receipt	4,47,471
Add : Repair and Maintenance Services to M/s M.P. Warehousing and Logistics Corporation, Jabalpur	1,95,722
Total Taxable Services	6,43,193

FY 2008-2009

Gross Receipt in respect of Commercial Construction Services rendered to Nagar Palika Garhakota	8,11,317
Less : Abatement of 67%	(5,43,582)
Net Receipt	2,67,735
Add : Repair and Maintenance Services to M/s M.P. Warehousing and Logistics Corporation, Jabalpur	87,684
Total Taxable Services	3,55,419

5. He further submits that even if the abatement is not considered at all, the total receipts during the year 2008-2009

was below the threshold limit of Rs. 10,00,000/-. He, therefore, prays that the impugned order may be set aside and the appeal may be allowed.

6. Learned Departmental Representative submits that while it is true that there were exemption limits during the two financial years as submitted by the learned Counsel, the abatement of 67% sought by the appellant is on the ground that the services which the appellant had rendered were a composite works contract service which involved supply of goods as well as services. The appellant had taken this plea before the Original Authority, but was not able to produce any documents in the form of work orders or invoices or bills to substantiate that the amount received by the appellant included the value of the materials. Therefore, the abatement was not allowed by the Original Authority. The appellant took the same plea before the Commissioner (Appeals) and did not again produce any evidence whatsoever to show that he appellant's contracts were for supply of goods as well as services. Therefore, the plea that the appellant is entitled to 67% abatement cannot be accepted.

7. The submissions advanced on behalf of the parties have been considered.

8. On a specific query from the Bench, the learned Counsel was also not able to produce any work order or invoice issued to the appellant which could show that the contracts included supply of goods or use of materials. Learned Counsel only produced

copies of some tender notice and assessment orders of the appellant by the commercial tax officers of the State. However, none of these documents could correlate and substantiate that the work orders received by the appellant and amounts paid to him were for composite works contract.

9. The first issue is whether the appellant is entitled to abatement of 67% from the gross amount received for commercial construction services from the Nagar Palika as claimed.

10. The appellant had made this claim before the Original Authority who recorded as follows :-

“15. In the instant case the party has not submitted any work orders/invoices/bills which could show that the gross amount charged by the party included the value of material. The party has themselves submitted a copy of vat registration certificate which is required for purpose of sale of goods. I find that in the absence of documents evidencing fulfillment of the conditions of the notification, the abatement cannot be allowed and thus I am of the opinion that the abatement under Notification No. 01/2006-ST is not available to the party and they are required to pay service tax on the taxable value of Rs. 21,67,287/- realized on account of commercial or industrial construction service”.

11. The appellant also made this plea before the Commissioner (Appeals) who recorded his finding in paragraph 6 as follows :-

“6. In view of the foregoing provisions, I find that in the present case, during the impugned period the appellant had received an amount of Rs. 21,67,287/- for providing the services of Commercial & Industrial Construction, but it is a matter of fact that they have failed to furnish any work order/contract issued by the service receiver to them. I find the provisions of the said notification clearly provide that the abatement of 67% from the gross amount charged towards providing taxable service are admissible only when conditions and explanations to the notification are fulfilled. The provisions of explanation are provided that “the gross amount charged shall include the value of goods and material supplied or provided or used by the provider of construction service for

providing such services". It is on record that the appellant had failed to take registration for provision of taxable services also failed to submit the ST-3 return under Section 70 of the Finance Act, 1994. Thus I find that the appellant neither furnished any work order/contract issued by the service receiver to them at the time of adjudication proceeding nor during the appeal proceedings. In the present facts and circumstances of the case is clearly violative of fulfillment of the conditions of the Notification No. 1/2006-ST dated 01.03.2006 and thus the abatement is not available to the appellant and they are required to pay service tax on the taxable value of Rs. 21,67,287/- realized on account of Commercial or Industrial Construction Service".

12. The appellant could not satisfy either the Original Authority or the Commissioner (Appeals) that the amount received from Nagar Palika for construction services included supply of materials or deemed supply of materials. The appellant also did not produce any invoices or work orders before us to substantiate his claim that the contracts were for supply of goods/deemed supply of goods as well as rendering services.

13. Learned Counsel for the appellant has, however, drawn our attention to the tender document of Nagar Palika dated 24.12.2007, work order dated 25.01.2008 and the assessment orders of the commercial tax authority of the State Government for the period 2007-2008 and 2008-2009. However, none of these documents establish that the amount which the appellant received was for composite contract for supply/deemed supply of materials and rendering services. The mere fact that the commercial tax authority had assessed the appellant for commercial tax does not prove that the assessment was towards part of the amount received under this contract for which it received consideration for construction services. The tender document also cannot be co-related with the receipts by the

appellant. The work order dated 25.01.2008 submitted by the appellant also does not indicate that the appellant is supposed to supply any goods or used goods. Therefore, the Commissioner (Appeals) was correct in not allowing the abatement of 67% from the gross receipts from the Nagar Palika.

14. However for the financial year 2008-2009, even if the gross receipts are considered the total receipts fall below the threshold limit of Rs. 10,00,000/- during the financial year. Therefore, no service tax can be levied for the financial year 2008-2009. The demand accordingly needs to be set aside for this financial year. No interest or penalty can consequently to be levied for this financial year.

15. In view of the above, the impugned order is modified by setting aside the demand for the year 2008-2009 along with interest and the penalties imposed under Sections 76 and 78 for this period. The remaining part of the impugned order is upheld. The appeal is disposed of, as above, with consequential relief, if any, to the appellant.

(Order pronounced in open court on 22/04/2022.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)