CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH- COURT NO. I

Service Tax Appeal No. 51462 of 2018

(Arising out of Order-in-Appeal No. 54 (RK) ST/JPR/2017-18 dated 21.02.2018 passed by the Commissioner (Appeals) and Additional Director General DGGSTI, Jaipur.)

M/s Shanti Construction **....Appellant**
119, Anand Nagar, Khatipura,
Vaishali Nagar, Jaipur-302021

Versus

Commissioner (Appeals) & **...Respondent**
Additional Director General
DGGSTI, JZU, JZU,
Jaipur-302001

APPEARANCE:

None for the Appellant
Mr. S.K. Ray, Authorized Representative for the Department

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

Date of Hearing/ Decision: December 20, 2023

FINAL ORDER NO. 51693/2023

JUSTICE DILIP GUPTA

The matter has been called out but no one has appeared on behalf of the appellant. The office has reported that the notice sent to the learned counsel for the appellant for hearing on 20.12.2023 was served on 05.12.2023.

2. It transpires that no one has been appearing on behalf of the appellant even on earlier occasions when the matter was listed on 06.07.2023 & 01.11.2023.

3. On 1.11.2023, the following order was passed:

> "Case has been called out, but no one has appeared on behalf of the appellant. On earlier occasion also, no one appeared on behalf of the appellant.
>
> 2. Learned authorized representative appearing for the Department may make an attempt to serve the

> notice upon the appellant. **Let a fresh notice be issued to the appellant indicating that the appeal shall be listed before the Tribunal on December 20, 2023.**
>
> **3. List on December 20, 2023."**

4. It is therefore considered appropriate to decide the appeal on merits after hearing Shri S.K. Ray, learned authorized representative appearing for the department.

5. This appeal is directed against the order dated 21.02.2018 passed by the Commissioner (Appeals) upholding the order dated 07.03.2017 passed by the Joint Commissioner. The Joint Commissioner had confirmed the demand of service tax to the extent of Rs. 87,81,378/- only and had dropped the demand of Rs. 48,897/-. The Joint Commissioner had also order for payment of interest and imposed penalties.

6. The appellant, as a sub contractor, was issued a show cause notice alleging that it had rendered service to M/s Manglam Builders and various parties relating to road constructions.

7. The issue that arises for consideration in this appeal is whether the appellant, as a sub contractor, was entitled to discharge service tax liability even if the main contractor had discharged service tax liability and whether the appellant was entitled to claim the benefit of exemption Notification dated 26.06.2012.

8. A Larger Bench of the Tribunal in **Melange Developers Private Limited** vs. **Commissioner of Service Tax, New Delhi**[1] has held that a sub contractor has to discharge service tax liability even if the main contractor discharges the service tax liability. It is, therefore, not

---

1 **2020(33) G.S.T.L. 116 (Tri. – LB)**

possible to accept the contention of the appellant in the Memo of Appeal.

9. So far as the exemption notification is concerned, the Commissioner (Appeals) has recorded a finding that the road was constructed for the residential complexes of private builders on the land owned by them and, therefore, benefit of the exemption notification could not be taken. There is no perversity in this finding that the road was constructed for private builders.

10. There is, therefore, no error in the order passed by Commissioner (Appeals). The appeal is, accordingly, dismissed.

(Dictated and pronounced in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

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

Shenaj, Shreya