CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. IV

SERVICE TAX APPEAL No. 53517 of 2015

[Arising out of Order in Original No. JAI – EXCUS - 000 – COM – 022 – 15-16 dated 17.07.2015 passed by the Commissioner, Central Excise, Jaipur-I]

M/s. Om Sokhal Builders & Constructions Pvt. Ltd. **...Appellant**
105, Ganpati Enclave,
Central Spine,
Vidyadhar Nagar,
Jaipur.

Versus

The Commissioner of Central Excise, Jaipur **....Respondent**

APPEARANCE:
None appeared for the appellant
Mr. Rakesh Kumar, Authorized Representative for the Respondent

CORAM :HON'BLE DR.RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING/DECISION: 06/02/2024

FINAL ORDER NO.54521/2024

DR. RACHNA GUPTA

None is present for the appellant. It is perused that appellant has not been appearing in the present matter. Vide order dated 6th November 2019 department was directed to serve notice upon the appellant after verifying its complete and proper address. Ld. Departmental Representative has mentioned that the said order was duly complied with. Infact, there was a request of adjournment received for 25th November, 2022 from the appellant subsequent to service of notice upon appellant. It was also made clear on 25.11.2022 that in case the appellant fails to appear on next date of hearing, the matter shall be decided on merits. These warnings were reiterated vide order dated 15th May, 2023. Ld. Departmental Representative has also mentioned that it has been verified that the appellant has not got any benefit under SVLDRS Scheme. In view of above observations, the fact that the matter still got adjourned for three more occasions and the fact that the appellant is not present even for today, the appeal is proceeded to be decided on merits in absence of the appellant.

2. Arguments on behalf of the department heard.

3. It is submitted that there is no infirmity in the order under challenge, appeal is therefore prayed to be dismissed.

4. The record of the present appeal memo perused. It is observed that a Show Cause Notice No.698 dated 19.12.2014 was served upon the appellant, after observing that appellant has filed a substantially false declaration under Service Tax Voluntary Compliance Encouragement Scheme of 2013 declaring the tax dues of Rs.58,17,433/- for the period from October, 2011 to December, 2011. Department observed that the appellant is involved in the construction activities and has declared their tax dues by wrongly availing the abatement on the value of construction work and on the advance money received for flat booking respectively. They have also not included the amount of their liability under reverse charge mechanism for obtaining legal consultancy and with respect to the remunerations paid to their Director. From the perusal of the documents annexed with VCES

application dated 20th December, 2013, Department observed that the appellant has failed to mention its income with the service tax liability of Rs.2,28,08,414/- for the period from April, 2011 to December, 2012. The said amount was accordingly proposed to be recovered alongwith the proportionate interest and the appropriate penalties.

5. The said proposal has been confirmed vide the order under challenge/Order-in-Original bearing No.22-15-16 dated 30th June, 2015. Being aggrieved the appellant had filed the present appeal but had failed to pursue the same. We observe that while filing the VCES the appellant has not included the value of following:

1) The amount of Rs.48,59,600/- as has been received by them against construction of building of four educational Institutes.
2) The total amount of Rs.4,11,59,366/- as involved in 18 to 19 agreements to construct residential houses.
3) The demand of service tax of an amount of Rs.50,40,000/- paid as remuneration to the directors and service tax of an amount of Rs.93,708/- of legal and professional expenses.

6. The demand of service tax for constructing educational institutes has been confirmed by the authority below on the ground that for any organisation or institutions to qualify as having been established solely for educational, religious, charitable, help, sanitation or philanthropic purposes, for non-commercial status, it is required that same fulfils the condition of being run without any profit making. None of the educational

Institutes were observed to have a non-commercial status. We have no reason to differ from these findings because there is no denial apparent on record that the educational institutions for whom appellant constructed the complex, were charging fees from the students. None of these educational Institutes are Government owned institutes. Also there is no evidence to prove that despite collection of fee, there was no profit to these institutes and that these educational institutes were non-profit driven. Hence we confirm the demand of service tax pertaining to construction of educational institute activity.

7. Coming to the second demand with respect to construction of residential complexes, the adjudicating authority below has submitted that the appellant has not produced any evidence in the form of invoices, detail of payment received from those for whom appellant constructed the houses and any evidence to prove that the amount of 18 agreements (Rs.1,49,63,653/-) relates to the construction services provided during the year 2011-12. From the agreements produced by the appellant, we observe that the appellant had agreed to construct individual residential houses for different person as named in the distinct agreement. There is nothing in agreement to suggest that these houses were the part and parcel of the same complex. Hence there is no evidence produced by the Department that these 18 agreements were 18 different residential units (more than 12 units) in a common area with several common facilities, as is the requirement in terms of section 65(91a) of Finance Act, 1994 which defines the residential complex. Once the construction does not qualify to be

called as a residential complex, question of any services rendered for constructing the same to be taxable does not at all arises. Hence, the findings of the adjudicating authority below confirming the demand alleging the construction of individual house as a taxable service, service of construction of Residential Complex are liable to be set aside.

8. Coming to the value of service tax which has been alleged to have been concealed in the VCES by the appellant that is with respect to remuneration paid to the Directors and with respect to the amounts spent for legal and professional consultancy, we are of the opinion that Director remuneration refers to the compensation which a company gives to its Directors for the services rendered by him either in the form of fees, salary or by use of company's assets. But the mere fact of payment of remuneration is not sufficient to hold that there exists an employer employee relationship between the company and the Director in which situation only the remuneration paid could have been taxable. The Revenue has not produced any evidence that on the amount of remuneration TDS in terms of section 192 of Income Tax Act was ever deducted. Hence, we hold that there arises no Service Tax liability qua the amount of said remuneration. Order under challenge is liable to be set aside qua this demand.

9. The value for legal and professional services the same is very much taxable, as it qualifies to be called as service for post negative list period it is not covered under the exclusion clause of

section 66 D of Finance Act. Hence, we do not find any infirmity while the demand on this count, has been confirmed.

10. In view of entire above discussion, following two demands are confirmed:

1 With respect to construction of Educational Institutes Complexes

2 With respect to legal and professional consultancy.

The following two demands are set aside:

1. Construction of 18 individual residential houses.
2. With respect to the amount of remuneration paid to the Directors.

11. As a result, the appeal stands **partly allowed**.

[Pronounced in the open Court]

(DR.RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Anita