CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH

SERVICE TAX APPEAL NO. 50350 OF 2019

(Arising out of Order-in-Original No. DL-GST-WEST-COM-22-18-19 dated 04.10.2018 passed by the Commissioner (Appeals), Ludhiana)

Principal Commissioner, Central Tax **.....Appellant**
Commissionerate, GST, Delhi West,
Engineers India Limited,
Annexe Building, Fifth Floor,
Bhikaji Cama Palace,
R.K. Puram, New Delhi-110066

VERSUS

M/s. Alkarma **.....Respondent**
57, Najafgarh Road (Rama Road)
New Delhi-110015

APPEARANCE:

Shri Anand Narayan, Authorized Representative for the Department
Shri Kamal Aggarwal, Chartered Accountant for the Respondent

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING/DECISION: 04.06.2024

FINAL ORDER NO. 55903/ 2024

JUSTICE DILIP GUPTA:

The department has filed this appeal for setting aside the order dated 04.10.2018 passed by the Commissioner, Central Tax, Delhi West, Commissionerate[1], by which the show cause notice dated 11.02.2009 issued to M/s. Alkarma[2] has been discharged.

2. The aforesaid show cause notice dated 11.02.2009 was issued to the respondent alleging that the completion and finishing services executed by the respondent would be leviable to service tax w.e.f. 01.10.2004 upto

1. **the Commissioner**
2. **the respondent**

15.06.2005 under 'construction service' and thereafter w.e.f. 16.06.2005 under 'commercial or industrial construction service'. The show cause notice further mentions:

> "10. As per ST-3 returns, the Noticee paid Service Tax on completion & finishing services provided in relation to commercial or industrial buildings and residential complexes with effect from 10.09.2004 and 16.06.2005 respectively. They had also availed CENVAT credit on inputs and input services under CENVAT Credit Rules, 2004 and had paid service tax at full rate. But with effect from 01.04.2007, the Noticee had started availing the benefit of abatement under Notification No. 1/2006-ST dated 01.03.2006. They had availed the benefit of abatement during the period from 01.04.2007 to 31.05.2007. Thus, it appeared that the Noticee had wrongly availed the benefit of abatement under Notification No. 1/2006-ST dated 01.03.2006 without satisfying the conditions laid down therein inasmuch as they had provided only completion & finishing services and simultaneously availed CENVAT credit on input services & inputs."

3. This show cause notice was assailed by the respondent before the Delhi High Court in W.P. No. 5666 of 2010 (M/s. Alkarma vs. Union of India and others), which petition was allowed by judgment dated 08.12.2016 and the show cause notice dated 11.02.2009 issued to the writ petitioner (the respondent in this appeal) was quashed in view of the judgments of the Delhi High Court in **Era Infra Engineering Ltd.** vs. **Union of India**[3] and **Intercontinental Consultants and Technocrats Pvt. Ltd.** vs. **Union of India**[4] as also the decision of the Larger Bench of the Tribunal in **Bhayana Builders (P) Ltd.** vs. **Commissioner Of Service Tax, Delhi**[5].

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3. 2019 (20) G.S.T.L. 717 (Del.)
4. 2013 (29) S.T.R. 9 (Del.)
5. 2013 (32) S.T.R. 49 (Tri. - LB)

4. When the aforesaid show cause notice dated 11.02.2009 came up for adjudication before the Commissioner, the judgment of the Delhi High Court in the Writ Petition filed by the respondent was placed.

5. The department had filed Civil Appeal No. 15570 of 2017 (The Union of India vs. M/s. Alkarma) before the Supreme Court to assail the judgment of the Delhi High Court. This Civil Appeal was dismissed by the Supreme Court and the judgment is reported in **Commissioner of Service Tax** vs. **Bhayana Builders (P) Ltd.**[6].

6. The Commissioner, after noticing the judgment of the Delhi High Court and the fact that the Civil Appeal filed by the department to assail the aforesaid judgment was dismissed, proceeded to discharge the show cause notice issued to the respondent for the reason that the show cause notice itself had been quashed.

7. Shri Anand Narayan, learned authorized representative appearing for the department submitted that the Commissioner committed an error in not examining the various issues that has been raised in the show cause notice and by a cryptic order discharged the show cause notice.

8. Shri Kamal Aggarwal, learned chartered accountant for the respondent, however, submitted that the Commissioner committed no error in discharging the show cause notice as the show cause notice had been set aside by the Delhi High Court and the Civil Appeal filed by the department for challenging the judgment of the Delhi High Court was dismissed.

9. It is not possible to accept the contention advanced by the learned authorized representative appearing for the department. Once the show cause notice had been quashed by the Delhi High Court, nothing remained

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6. 2018 (10) G.S.T.L. 118 (S.C.)

to be adjudicated upon by the Commissioner. The Commissioner, therefore, committed no illegality in discharging the show cause notice.

10. The appeal is, accordingly, dismissed.

(Order pronounced and dictated in Open Court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

Shreya