CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>NEW DELHI</u>

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal No. 52766 of 2018

(Arising out of Order-in-Appeal No.508 (CRM)/ST/JDR/2018 dated 29.05.2018 passed by Commissioner (Appeals) Central Excise & CGST, Jodhpur)

M/s Alankar Minerals **.........Appellant**
Village Munwas, P.O. Kailashpuri,
Udaipur (Raj.) - 313202

VERSUS

Commissioner Central Excise & CGST **.......Respondent**
142-B, Hiran Magri Sector-11,
Udaipur (Raj.) - 313001

<u>APPEARANCE</u>:
Shri Bipin Garg and Ms. Kainaat, Advocates for the Appellant
Shri Manoj Kumar, Authorized Representative of the Department

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

FINAL ORDER NO. 55941/2024

Date of Hearing/Decision : 24.06.2024

<u>JUSTICE DILIP GUPTA :</u>

M/s Alankar Minerals[1] has sought the quashing of the order dated 29.05.2018 passed by the Commissioner (Appeals). This order upholds the order dated 24.01.2017 passed by the Assistant Commissioner confirming the demand of service tax with interest and penalty under sections 77 and 78 of the Finance Act, 1994[2].

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1. the appellant
2. the Finance Act

2. The appellant claims that it is engaged in the manufacture of marble slabs/tiles by converting the marble blocks into slabs by sawing them and then subjecting them to the process of edge cutting, crack filling and polishing. The appellant further claims that it is involved in the above process in respect of marble blocks purchased by the appellant as well as for orders on job work basis from others and is registered under the Central Excise Act. The appellant further claims that as the marble is classified under Chapter Heading 2515, the process would amount to manufacture as per Note VI of Chapter 25 of the Central Excise Tariff and the appellant would not be liable to pay service tax.

3. However, a show cause notice dated 05.08.2015 was issued to the appellant requiring the appellant to pay service tax under 'Business Auxiliary Service'. Annexure A to the show cause notice contains details of the income received by the appellant under the category of 'Business Auxiliary Service' and it is reproduced below:

Details of Applicability of Service Tax on Income received under various charges which falls under category of Business Auxiliary Services of M/s Alankar Minerals, Village Munwas, P.O. Kailashpuri, Udaipur

S.No.	Description of Charges	Amt. of Income in 2010-11 (as per B/L)	Amt. of Income in 2011-12 (as per B/L)	Amt. of Income in 2012-13 (as per B/L)	Amt. of Income in 2023-14 (as per B/L)
1	Job Receipts	0	423610	0	0
2	Dressing Charges	0	462500	91500	0
3	Polishing Charges	0	547016	11050	0
4	Sawing Charges	0	3334707	1291335	0
		0	**4767833**	**1393885**	0

4. The Commissioner (Appeals) recorded the following findings in the impugned order :

> "On perusal of aforesaid definition of Business Auxiliary Service, 1 find that the appellant has performed the activities of dressing, polishing etc. on behalf of the parties which hired the appellant on job work basis hence the said services are covered under the definition of Business Auxiliary Services
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> 5.2. I also find that the appellant has contended that the amount received for the said job work is included in their excisable turnover and has paid excise duty on such turnover. In this regard, I find that appellant has failed to establish the same as neither in the ER-3 filed by the appellant. they have mentioned/included such job work nor have they provided any contract between principal manufacturer and themselves as job worker. Moreover, they have not submitted any invoice raised regarding this job work. Therefore, I find that the contention of the appellant that the amount of job work is included in the excisable turnover and exempted under Clause (c) of the Serial No. 30 of the Notification No. 25/2012 dated 20-06-2012 is without any bases and is not acceptable.
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> 5.3 I find that the appellant contested that they are doing job work in respect of converting of marble blocks into marble slabs by doing job work of dressing, sawing, sizing and polishing of marble blocks, but I find that none of the job work done by the appellant is falling in the exempted list. In addition to that, the appellant has also failed to prove that the charges received by the appellant for job work has been included in their excisable turnover or excise duty on the same has been paid by principal manufacturer or appellant themselves. So, it is clear that job work done by the appellant does not fall under Exemption Notification No. 25/2012-S1 dated 20-06-2012.
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> 5.4 From the above it is clear that the appellant is liable to pay Service Tax on the sand job work. Even, if for sake of arguement, the appellant contention that the said work would amount to manufacture were accepted, still appellant has failed to establish, through any evidentiary document or otherwise, that such work was accounted for in their excise turnover or applicable excise duty has been paid by themselves or the principal manufacturer over the said job work."

5. Shri Bipin Garg, learned counsel for the appellant assisted by Ms. Kainaat, advocate submitted that the findings recorded by the Commissioner (Appeals) are perverse as the appellant had paid central excise duty since the process undertaken by the appellant amounted

to manufacture. It is his submission that in such a situation the appellant would not be required to pay service tax in terms of the definition of 'Business Auxiliary Service' itself or under the Notification dated 20.06.2012.

6. A perusal of the order passed by the Assistant Commissioner shows that reliance has been placed upon a report dated 09.01.2017 submitted by the Range Officer regarding verification of certain documents including, RG-I, job work details, ledger account from which the Range Officer concluded that there was no correlation between ER-3 returns and the documents submitted by the appellant. The order also mentions that the contention of the appellant that the amount received for job work was already included in the excisable turnover and duty had also been paid on the same was not justified.

7. The contention of the learned counsel for the appellant is that the said report could not have been relied upon without providing a copy of the said report to the appellant.

8. This contention of the learned counsel for the appellant seems to be justified. If the said report was to be relied upon, it was incumbent upon the Assistant Commissioner to provide a copy of the report to the appellant.

9. This apart, when, *prima facie*, the work performed by the appellant would amount to manufacture, in which event it would not be subjected to service tax, an opportunity can be granted to the appellant to provide the relevant documents to the Commissioner (Appeals) to substantiate the contention advanced by the appellant.

10. The impugned order dated 29.05.2018 passed by the Commissioner (Appeals) is, accordingly, set aside and the matter is remitted to the Commissioner (Appeals) to decide the appeal afresh in the light of the observations made above. Suffice it to state that a copy of the report dated 09.01.2017 submitted by the Range Officer shall be made available to the appellant within a period of six weeks from the date a copy of the order filed by the appellant before the Commissioner (Appeals). The appellant would also be granted six weeks time thereafter to place on record the relevant documents to substantiate the stand taken by the appellant. Needless to state that the Commissioner (Appeals) shall make all endeavours to decide the appeal expeditiously.

11. The impugned order dated 29.05.2015 is, accordingly, set aside and the appeal is allowed to the extent indicated above.

(Dictated & pronounced in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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