CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing: 12.07.2017
Date of decision: 26.07.2017

Appeal No. ST/50168/2014(DB)

[Arising out of the Order-in-Appeal No.125(VC)ST/JPR-I/2013 dated 07/10/2013, passed by the Commissioner (Appeals), Central Excise Commissionerate,Jaipur]

M/s K.D.S. Constructions & Interior Pvt. Ltd … Appellant

Vs.

CCE, Jaipur-I … Respondent

Appearance:
Present Ms. Rinki Arora, Advocate for the appellant
Present Ms. Neha Garg, DR for the respondent

Coram: Hon'ble Mr.S.K. Mohanty, (Judicial Member)
Hon'ble Mr.Ashok K. Arya, (Technical Member)

FINAL ORDER No. 55553/2017

Per Ashok K. Arya :

1. *M/s K.D.S. Construction and Interiors Pvt. Ltd*. is in appeal against Order in Appeal No. 125/2013 dated 07/10/2013 whereunder the benefit of Notification No. 15/2004 as amended by Notification No. 01/2006 has been denied on the premise that the services provided by the appellant are in relation to completion and finishing services, and as such abatement under Notification No. 01/2006 is not admissible. The impugned order has also inter alia held that construction of institutions or buildings is taxable though the appellant assessee says that such activity is not taxable, when the construction is for charitable purpose and is non-commercial.

2. The brief facts are that:

i. The appellant is engaged in construction of buildings for various entities claiming that they are charitable institutions and are non-commercial in nature.

ii. The appellant is also engaged in various types of civil construction works like braking, dismantling and removing existing structures, doing interior & maintenance & civil work, construction of additional work station, civil work in Apex Mall, electrical work etc for TATA Tele Service Ltd.

iii. The appellant also states that in respect of work undertaken for education society and construction for charitable institution, the impugned order allowed the benefit except for Sahara Welfare Foundation without assigning any reason.

iv. The appellant states that service tax liability of Rs. 6,38,232/- along with equivalent penalty has been confirmed by the impugned order in appeal against them.

v. Therefore, the appellant is in appeal before the Tribunal.

3. Both sides have been heard.

4. The facts of the case and submissions of both the sides have been carefully considered.

5. The appellant pleads that they are entitled to the facility of abatement of 67% of the gross amount charged for providing construction service as defined under Section 65(25b) of the Finance Act, 1994, as per the provisions of Notification No. 15/2004 ST dated 10/09/2004 and Notification No. 1/2006-ST dated 01/03/2006. The appellant also states that impugned order has wrongly given the reason for denying the abatement facility that they provided only completion and finishing services in relation to building or civil construction, referred to in sub-clause (c) of Clause (25b) of Section 65 of the Finance Act, 1994. The appellant has vehemently argued that they have not provided exclusively only completion and finishing services as has been mentioned in the impugned order, and, therefore, they are entitled the benefit of Notification No. 1/2006 in respect of admissibility of abatement.

5.1. Another plea of the appellant is that they are not liable to pay service tax for the construction of building for Sahara Welfare Foundation (SWF) as the said buildings of SWF are for the charity and social welfare and as such the activity is non-commercial.

6. The Ld. DR for the Revenue has reiterated the findings given in the impugned order.

7. After having carefully considered the facts of the case and submissions of both the sides it appears that the impugned order has not fully examined the facts and submissions of the appellant where they state that their civil construction work not exclusively in the nature of completion and finishing services and that in case of the construction of the buildings for use by SWF, the buildings were to be used for the purpose of social welfare and for non-commercial activities. When it is so the subject matter is remanded back to the Original Adjudicating Authority, who shall examine all these issues afresh and after giving fresh opportunity of personal hearing and submission of documents, if any, to the appellant.

8. In the result, the impugned order is set aside, and appeal allowed by way of remand in above terms.

[Order Pronounced in the open court on_26/07/2017_]

(S.K.Mohanty)
Member (Judicial)

(Ashok K. Arya)
Member (Technical)

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