CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No. ST/50541/2014-ST [DB]

[Arising out of Order-in-Original No. 45/S.Tax/D-I/2013 dated 14.10.2013 passed by the Commissioner Central Excise, Delhi.]

M/s. ALKON. …Appellant

Vs.

C.S.T., New Delhi. … Respondent

Appearance:
Mr. Manjit Singh Gupta, (Advocate) for the Appellant
Mr. Sanjay Jain, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing.03.11.2017
Date of Decision.__21.02.2018_

Final Order No. 50717 /2018

Per S.K. Mohanty:

This appeal is directed against the impugned order dated 14.10.2013 passed by the Commissioner of Service Tax, Delhi, wherein Service Tax demand of Rs. 70,62,094/- alongwith interest was confirmed and penalties were imposed under Section 77 and 78 of the Finance Act, 1994 on the appellant. The adjudged demands were confirmed against the appellant on the ground that it did not pay Service Tax on the taxable services of “Commercial Industrial Construction Service” and “Construction of Complex Service” provided during the period 2005-06 to 2009-10 (upto 30.09.2010).

The Department had resorted to the best judgment assessment in terms of Section 72 of the Act for non filing of returns by the appellant during the relevant period.

2. The ld. Advocate appearing for the appellant submitted that during the relevant period, the appellant had undertaken the activities of fabrication and fixing of Aluminum door and windows etc. and raised the composite bills for supply of goods and for installation service rendered by it. He further submitted that since the appellant was register with the Sales Tax Department for providing works contract service and charged VAT in the bills for supply of material, the activities undertaken should be considered as works contract service, liable to service tax w.e.f. 01.06.2007. He further submitted that on pointing out the mistake by the Department regarding non-payment of Service Tax, the appellant promptly got itself registered with the Service Tax Department and discharged the service tax liability under works contract service. Thus, he submitted that the adjudged demand cannot be confirmed against the appellant.

3. On the other hand, the ld. DR appearing for the Revenue reiterated the findings recorded in the impugned order.

4. Heard both sides and perused the case records.

5. We find that the ld. Adjudicating authority vide the impugned order has observed that if VAT/Sales Tax is payable on the contract of Commercial or Industrial Construction Service or construction of Complex service, it will be classified under works contract service and if VAT /Sales Tax is not payable, such service will be taxable

under the above existing heads of services. However, the ld. Adjudicating authority did not consider the submissions of the appellant that it provides works contract service on the ground that it failed to provide the documents to prove such claim. Since the documents/records have to be verified by the original authority, which in this case, were admittedly not produced by the appellant, we are of the view that the matter should go back to the original authority for verification of the documents/ records to be produced by the appellant, showing that it undertook works contract service during the disputed period and on supply of material for execution of the assigned task, it had paid appropriate amount of Sales Tax/ VAT into the state Government Account.

6. Therefore, by setting aside the impugned order, we remand the matter to the original authority for a fresh fact finding on the issue regarding the claim of the appellant that it provided works contract service during the relevant period. The appellant is directed to corporate with the adjudicating authority for denovo adjudication of the matter and should produce the relevant documents to show that it had in fact, undertaken works contract service during the material time, to which the present dispute relates.

7. In the result, the appeal is allowed by way of remand to the original authority.

(Pronounced in the open court on __21.02.2018_)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi