CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court – I

Service Tax Appeal No. 173 of 2012

(Arising out of OIO No.48/2011 (MP) dt.27.09.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam-I)

Navya Constructions
Post Office Street, Seethammadhara,
Visakhapatnam, AP – 530 013

......Appellant

VERSUS

Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam-I
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035

......Respondent

Appearance
Shri V. Ravindranath, Advocate for the Appellant.
Shri Chittaranjan W. Prakash, AR for the Respondent.

Coram:
HON'BLE MR. ANIL CHOUDHARY (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30225/2023

Date of Hearing: 08.08.2023
Date of Decision: 08.08.2023

[Order per: ANIL CHOUDHARY]

Heard the parties. The issue involved in this Appeal is whether the Appellant, who has admittedly executed works contracts, is liable to pay service tax for the period 2004-05 to 2008-09, for the demand proposed and confirmed under the head "Commercial & Industrial Construction Service" (CICS) or otherwise.

2. From the SCN read with OIO, it is an admitted fact that the Appellant has done various construction services in the nature of Works Contract Service (WCS) as clarified by the Hon'ble Supreme Court vide its judgment in the case of CCE & Customs vs Larsen & Toubro Ltd [2015 (39) STR 913 (SC)].

3. Learned Counsel further contends that even after 01.06.2007, service tax on WCS is not chargeable under any other heads like CICS or Commercial Construction Service (CCS) etc. For this, he relies on precedent ruling of this Tribunal in the case of Real Value Promoters Pvt Ltd & others vs CGST & CE,

Chennai [Final Order No. 42436-42438/2018 dated 18.09.2018 (Chennai Bench)]. The said ruling of Chennai Bench has been followed by this Tribunal in subsequent cases like Voora Shreeram Construction Pvt Ltd vs CCE & ST, Chennai [2020 (35) GSTL 574 (Tri-Chennai)], wherein it has been held that after 01.06.2007 also service tax on composite contract involving transfer of material is taxable only as WCS and not under other heads like CICS or CCS, etc.

4. As regards the demand of Rs.29,708/- under Goods Transport Agency Service (GTA), learned Counsel relies on the pleadings from SCN and OIO, that there is no allegation that Appellant who has availed that service, is a GTA. The demand has been raised on the basis of the amount appearing in Profit & Loss Account under the head "transportation expenses". The Appellant explains that actually they have used services from individual truck owners for transport of their construction material and removal of debris from construction site on per-truck basis, where no consignment note was issued. Thus, the services are not classifiable under GTA service. Accordingly, he prays for allowing the Appeal with consequential benefits.

5. Learned AR for Revenue relies on the Impugned Order.

6. Having considered the rival contentions, we set aside the demand under CICS (Commercial & Industrial Construction Service). So far the demand of Rs.29,708/- is concerned under GTA service, we find that there were no appropriate pleadings before the Court below that the said service is under GTA service where no consignment note was issued. In this view of the matter, we confirm the demand under GTA service of Rs.29,708/-. In the facts and circumstances, all penalties are set aside.

7. Accordingly, the Appeal is allowed in part as indicated above.

(Dictated and pronounced in the Open Court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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