CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 1724 of 2012

(Arising out of **Order-in-Original** No.VIZ-STX-001-COM-44-12 dated 13.03.2012 passed by Commissioner of Central Excise, Customs & Service Tax, Visakhapatnam)

R V R Projects Pvt Ltd., .. **APPELLANT**
Door No. 9-16-29, CBM Compund,
Visakhapatnam,
Andhra Pradesh – 530 003.

VERSUS

Commissioner of Central Tax .. **RESPONDENT**
Visakhapatnam– I
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035.

APPEARANCE:

Shri A. Sarveswara Row, Advocate for the Appellant.
Shri A Rangadham, Authorised Representative for the Respondent.

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

FINAL ORDER No. A/30301/2023

Date of Hearing:20.09.2023
Date of Decision:20.09.2023

[ORDER PER: BENCH]

Heard the parties.

2. The issue involved is whether the Appellant assessee is liable to service tax for non-inclusion of value of free supply of materials, in the gross amount, for arriving at the taxable turnover for payment of service tax.

3. The brief facts are that the Appellant assessee entered into contract with the Toyo Engineering India Ltd., Mumbai for providing Pile Foundation, Civil and Structural Works for Sulphur Recovery Unit at HPCL Refinery, Visakhapatnam. The Principal – Toyo supplied reinforcement and structural steel free of cost, for execution of the work. As the value of materials used – supplied free by the principal, for the above work was not included in the gross value for the purpose of calculation of abatement (for material component), it appeared to revenue that Appellant assessee is not entitled to avail the benefit of abatement under Notification No. 1/2006–ST dated 01.03.2006 and accordingly it appeared that Appellant assessee is liable to pay service tax on the whole / gross amount received, without abatement.

4. On the following allegations referring to Notification No. 15/2004-ST and subsequent Notification No. 1/2006-ST it was observed in Para 8 of Show Cause Notice:

> "8. Since, the assessee had not included the value of the materials supplied free by the service recipient and thereby not calculated the gross amount correctly, it appears that the assessee is not eligible for the benefit of Notification No. 01/2006-ST dated 01.03.2006. Therefore, the assessee appears to have contravened the provisions of Section 68 of the Finance Act, 1994, read with Rule 6 of the Service Tax Rules, 1994, in as much as they have not paid the appropriate Service Tax payable on the amounts received for the said services rendered by them during the said period. The Service Tax payable on the Gross Amount of Rs. 6,63,31,670/- allegedly received by the assessee towards the said work for the period from 05/2006 to 03/2008 works out to Rs. 81,50,525/-, whereas the assessee has paid only Rs. 26,89,659/- towards the Service Tax liability (including Ed. Cess and S.H.Ed.Cess). Thus, there is a short payment of Rs. 54,60,866/- towards Service Tax (including Ed.Cess and S.H.Ed.Cess) which is recoverable under Section 73 of the Finance Act, 1994. A detailed worksheet is enclosed as Annexure to the Show Cause Notice. They further appear to be liable for penal action under Sections 76 ibid for failure to pay the appropriate Service Tax payable by the due date and under Section 77 ibid for contravention of the provisions of Notification No. 01/2006 dated 01.03.2006 and Section 68 ibid, read with Rule 6 of the Service Tax Rules, 1994."

5. SCN dated 21.02.2011 was issued on the above ground proposing to demand service tax – short paid Rs. 54,60,866/- calculated on the gross amount of Rs. 6,63,31,670/- and the tax liability calculated at Rs. 81,50,525/- less amount already paid Rs. 20,89,659/-. Further extended period of limitation was also invoked and demand was raised for the period 2005–06 to 2007–08.

6. The show cause notice was adjudicated on contest and the Learned Commissioner confirmed the proposed demand relying on the ruling of this Tribunal in Jai Hind Projects Ltd., Vs CST, Ahmedabad [2010 (18) STR 650 (Tri-Ahmd)].

7. Being aggrieved, the Appellant is before this tribunal. Learned counsel for the Appellant states that the free supply of material being reinforcement and steel was not part of the gross value in the contract, as per the agreement between the parties. Thus inclusion of the same for calculation of tax liability was beyond the scope of Section 67 of the Finance Act 1994. He further states that the ruling in the case of Jai Hind Projects Ltd., of Ahmedabad bench have been overruled by the Larger Bench of this Tribunal in Bhayana Builders Pvt Ltd., Vs CST Delhi reported at [2013 (32) STR 49 (Tri – LB)]. The Larger Bench held that the value of free supply of materials cannot be added to the gross value of the composite contract/works contract for calculation of service tax, whether the free supplies to construction service provider is outside the taxable value or gross amount charged, within

the meaning of expression in Section 67 of the Finance Act. The said ruling of the Larger Bench of this Tribunal have been affirmed by Hon'ble Supreme Court in appeal by revenue, reported at [2018 (10) GSTL 118].

8. Learning AR for revenue relies on the impugned order.

9. Having considered the rival contentions, we find that admittedly the free supply, in the facts of the present case, of reinforcement and structural steel, was not part of the gross value of the contract, as agreed between the parties. We further find that the facts of this case are covered in favour of the Appellant assessee by the ruling of the Apex Court in Bhayana Builders Private Ltd., (supra).

10. In view of aforementioned findings and observations, we allow the appeal and set aside the impugned order. The Appellant is entitled to consequential benefits, if any, in accordance with the law.

(Order dictated and pronounced in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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