IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No.ST/70922/2013

(Arising out of Order-in-Original No.03/Commr/ST/KOL/2013-14 dated 29.04.2013 passed by the Commissioner, Service Tax, Kolkata)

M/s. Conelect Engineers and Contractors

Applicant (s)/Appellant (s)

Vs.

Commissioner of Service Tax, Kolkata

Respondent (s)

Appearance:

Shri A.Agarwal, CA for the Appellant (s)
Shri S.Mukhopadhyay, Suptd. (AR) for the Respondent (s)

CORAM:
Hon'ble SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI C. J. MATHEW, TECHNICAL MEMBER

Date of Hearing/Decision:-19.03.2018

ORDER NO.FO/75672/2018

Per Dr. Satish Chandra,

1. The present appeal is filed against Order-in-Original No.03/Commr/ST/KOL/2013-14 dated 29.04.2013 passed by the Commissioner, Service Tax, Kolkata. The period of dispute is 2006-07, 2010-2011. The appellant was engaged in the business of laying the cables for the Calcutta Electricity Supply Corporation (CESC). The department has demanded the service tax under the "Erection, Commissioning & Installation Service" and also under the heading of "Transportation of Goods by Road Service". Being aggrieved by the same, the appellant has filed this appeal.

2. Heard Shri A.Agarwal, CA and Shri S.Mukhopadhyay, Suptd.(AR) for the parties.

3. After hearing both sides and on perusal of appeal record it appears that the appellant has submitted before the Adjudicating Authority that -

> " *For that the notice would be please to provide all documents necessary to substantiate their case, for which another opportunity may be given if so required, before any order is passed, which is prejudicial to the interest of the noticee.".*

Further, the Adjudicating Authority finally observed that -

> *"therefore, I am of the considered opinion that the assessee failed to furnish any conclusive evidence to establish that all the alleged jobs involved under the relevant work orders merit consideration under the CBE&C Circular No.123/5/2010-TRU dated 24.05.2010 as non-taxable service. Accordingly, I cannot accept their claim in this regard."*

5. During the course of argument, Ld. Counsel submits that if an opportunity will be provided then necessary documents can be submitted once again.

6. When it is so then we set aside the impugned order and remand the matter to the Adjudicating Authority where the appellant can submits fresh evidence, if any, as per law. Appellant should be given reasonable opportunity to present their case. If appellant will not cooperate then law will take its own course.

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

(Dictated and Pronounced in the Open Court)

S/d.
(Justice Dr. Satish Chandra)
President

S/d.
(C. J. MATHEW)
MEMBER (Technical)

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