CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EAST REGIONAL BENCH : KOLKATA

Service Tax Appeal Nos. 75190/17 & 75362/17

(Arising out of the Order-in-Appeal No.93-94/ST/B-II/2016 Dated-27.10.2016 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, BBSR)

NOCCL Balasore Infrastructure Co.

...APPELLANT(S)

VERSUS

Commr. of Central Excise, Customs
& Service Tax, Balasore

...RESPONDENT(S)

APPEARANCE

Sri Subrata Satapathy, Advocate

FOR APPELLANT(S)

Sri K. Choudhury, Supdt. (A.R.)

FOR THE RESPONDENT(S)

CORAM:

SHRI P.K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING: 07/03/2018 **Date of Pronouncement:26/04/2018**

FINAL ORDER NO. :FO/75849-75850/2018

Per SHRI P.K. CHOUDHARY

Common issues are involved in these appeals and therefore both were taken up together for disposal.

2. The appellant filed application for refund of Service Tax of Rs.2,15,401.00 for the period July 2012 to September 2012, and Rs. 13,41,249.00 for the period October 2012 to March 2013. The Adjudicating authority rejected the refund claims by separate Adjudication Order. By the impugned Orders, the Commissioner (Appeals) upheld the Adjudication Orders.

3. Heard both the sides and perused the appeal records.

4. The appellant contended that the appellant company in the course of its activities of Industrial development, under the Government of India Scheme, engaged for civil construction work and obtained Service Tax Registration under the category of Works Contract. Subsequently, it is noticed that the appellant is not liable to pay the Service Tax under Reverse Charge Mechanism as it is a Non Profit making company without any Share Capital. It is further contended that the construction job were outsourced by the appellant to various Contractors as per Work Orders. It is stated that the appellant company has been incorporated under Section 25 of the Companies Act, 1956, without the addition of the word "Private Limited" to its name, vide letter dated 25.01.2010 issued by the Regional Director Eastern Region, Kolkata. It is further contended that companies incorporated under Section 25 of the Companies Act, 1956, were exempted from payment of Service Tax under Reverse Charge Mechanism.

5. On perusal of the impugned Orders, I find that both the authorities below had not considered the submissions of the appellant on this issue. Apart from that, the Adjudicating authority observed that the refund claim will only arise if the claimant had reimbursed 100% of the Service Tax to the Contractor and the same has been deposited to the

exchequer account fully. On the other hand, the Commissioner (Appeals) held that the observation of the Adjudicating authority appears to be not correct. Thus, there is no clarity in the impugned orders and therefore, such orders cannot be sustained.

6. In view of the above discussion, the matter is remanded to the Adjudicating authority to decide afresh after considering the submissions of the appellant and to pass Order in accordance with law. Both the appeals filed by the appellants are allowed by way of remand.

(Pronounced in the Court on 26/04/2018)

Sd/-

(P.K. CHOUDHARY)
JUDICIAL MEMBER

k.b./-