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

S.T.Appeal No.78244/18

(Arising out of Order-in-Appeal No.118/SKS/BOL/ST/2017-18 dated 26.03.2018 passed by CGST, Central Excise, Bolpur)

M/s Megdut Construction

Applicant (s)/Appellant (s)

Vs.

CGST, Central Excise, Bolpur

Respondent (s)

Appearance:

Shri S. B. Sharma, Advocate for the Appellants(s)
Shri A. K. Biswas, Supdt. (AR) for the Revenue

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 14.11.2018
Date of Decision : 14.11.2018

ORDER NO. FO/A/76942/2018

Per Bench :

The present appeal is against the Order-in-Appeal No.118/SKS/BOL/ST/2017-18 dated 26.03.2018.

2. The appellant is registered with the Department for payment of service tax on construction services in respect of commercial or industrial buildings and civil structures. They have also carried out maintenance and repair services. The Department, after verification of the account of the appellant, observed that the appellant was to pay service tax to the tune of Rs.2,93,423/- during the period from 2004-05 to 2008-09. The show-cause notice dated 13.04.2010 was issued to the appellant by the original authority ordering payment of service

tax as above under the category of "maintenance and repair services". He also denied the claim of the appellant for abatement. When the issue was carried out before the Commissioner (Appeals), he upheld the classification as ordered by the original authority, but remanded the matter for re-quantification of the demand in the light of the observations made in the Order-in-Appeal, which order stands challenged in the present appeal. The appellant has contended that the activities are more appropriately classifiable under the category of "works contract services" w.e.f. 01.06.2007.

3. The appeal is listed today to resolve the dispute regarding payment of pre-deposit.

4. In this connection, heard Shri S.B.Sharma, ld.Advocate for the appellant as well as Shri A.K.Biswas, ld.D.R. for the Revenue.

5. The ld.Advocate for the appellant submitted that the appeal deserves to be heard without order of any predeposit inasmuch as no quantification of demand exists as per the impugned order. The ld.Commissioner (Appeals) has remanded the matter for denovo decision and hence no demand survives. In any case, he pointed out that the appellant has already made payment of Rs.96,345/- in the year 2006-07 by way of an arrear. If pre-deposit is insisted, the above amount may be considered towards pre-deposit and the appeal may be decided on merit.

6. The ld.D.R. for the Revenue has no objection to consider the above amount as pre-deposit.

7. With the concurrence of both sides, the appeal itself is taken up for decision since the issue involves in a short compass.

8. The dispute pertains the activities carried out by the appellant for Durgapur Steel Plant. Both the lower authorities have taken the view that the activities of the appellant are liable to service tax under the category of "maintenance and repair services". But the appellant has canvassed in the present appeal that such services are appropriately classifiable under "works contract services and cleaning services". To appreciate the nature of the activities conducted, it will be necessary to scrutinize the various work order executed by the appellant for their customer. Inasmuch as the issue has been remanded by the Commissioner (Appeals) to the original authority for re-quantification, we are of the view that the issue of correct classification of the services may also be directed to look into by the original authority. To facilitate this, we set aside the impugned order and remand the matter to the original authority for denovo decision. He will keep in view the observations of the ld.Commissioner (Appeals) as well as the arguments advanced before this Appellate Authority that the activities will be appropriately classifiable under works contract services well as cleaning services. No doubt, he will extend an opportunity to effective hearing before passing order in denovo proceeding.

9. In the result, the impugned order is set aside the matter is remanded to the original authority.

(Dictated and pronounced in the open court)

Sd/	Sd/
(P.K.Choudhary)	**(V.Padmanabhan)**
Member (Judicial)	**Member (Technical)**

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