IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.75234 of 2014

(Arising out of Order-in-Original No.07/S.T./Commr./2013 dated 29.11.2013 passed by Commissioner of Central Excise & Service Tax, Patna)

M/s Bihar Industrial Area Development Authority
1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna-800004

Applicant

VERSUS

CCEx. & S.Tax, Patna
3rd Floor, Central Revenue Building (Annexe), Birchand Patel Path, Patna-800001

Respondent

APPERANCE :

Shri D.V.Pathy, Advocate for the Appellant
Shri K.Chowdhury, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR.P.VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO.76606/2019

DATE OF HEARING : 24.07.2019
DATE OF DECISION : 24.07.2019

PER P.K.CHOUDHARY :

The facts of the case in brief, are that the appellant is a Government of Bihar undertaking which has been constituted under the Bihar Industrial Authority Act, 1974 for planned development of the industrial area. The Appellant was served with a Show-cause notice dated 31/07/2012 demanding service tax of Rs.144,36,49,457/- on renting of immovable property services for the period June 2007 to March 2011 along with interest and for imposition of penalty under section 76,77 and 78 of the Finance Act, 1994.

2. The Adjudicating Authority confirmed the demand of service tax along with consequential interest and imposed penalty under section 77

and 78 of the Finance Act, 1994 and penalty proceeding under section 76 of the said act was dropped. Hence, the present appeal before the Tribunal.

3. The Ld. Counsel, Shri D.V.Pathy, appearing on behalf of the appellant, submits that the lower authorities have not considered the facts of the case of the Appellant. That the Appellant cannot be subjected to service tax for the period prior to 01/07/2010 and hence the majority of the demand is unsustainable. They have also produced a Chartered Accountant's certificate dated 25/01/2014 certifying the receipts in various years from leasing activity of the Appellant. He thus requested to drop the demand in line with the CA certificate.

4. The ld.D.R., Shri K.Chowdhury, appearing on behalf of the Revenue, justified the impugned order.

5. Heard both sides and perused the appeal records.

6. We find that in the present issue, the Appellant had not produced the Chartered Accountant's certificate dated 25/01/2014 before the adjudicating authority to determine whether the amounts received by the Appellant prior to 01/07/2010 can be made taxable under the head of renting of immovable property services under section 65(98A) read with section 65(105)(zzzz) of the Finance Act, 1994. Thus, we find it appropriate at this stage to remand the matter back to the Adjudicating authority who would consider the CA certificate as filed by the Appellant and accordingly dispose off the matter in a time bound manner. All the issues in the matter are kept open and the Appellant is directed to produce all the relevant records before the Adjudicating authority.

7. In view of the above, the appeal filed by the appellant is allowed by way of remand.

(Operative part of the order was pronounced in the open court)

Sd/
(P. K. Choudhary)
Member (Judicial)

Sd/
(P.V.Subba Rao)
Member (Technical)

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