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

REGIONAL BENCH - COURT NO.2

Service Tax Miscellaneous Application No.426 of 2010 (Stay)
(On behalf of Appellant)
And
Service Tax Appeal No.180 of 2010

(Arising out of Order-in-Original No.6/ST/Commr./2010 dated 24.02.2010 passed by Commissioner, Central Excise, Ranchi.)

M/s. National Building Construction Corporation Limited
(CTPS Works (DVC), PO: Chandrapura, Dist: Bokaro-828403.)
...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Ranchi
.....Respondent
(Central Revenue Building, 5, Main Road, Ranchi-834001.)

APPEARANCE

Shri Akshat Agarwal, Advocate for the Appellant (s)
Shri Joydip Chattopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI RAJU, MEMBER(TECHNICAL)

MISCELLANEOUS ORDER NO. 75229/2021
FINAL ORDER NO. 75637/2021

DATE OF HEARING : 27 July 2021
DATE OF DECISION : 27 July 2021

P.K. CHOUDHARY :

The present appeal, filed by M/s. National Buildings Construction Corporation Ltd.(hereinafter referred to as the Appellant), is being taken up for disposal on merits pursuant to Order dated 12.12.2020 passed by the Hon'ble Jharkhand High Court in Tax Appeal No. 29 of 2013. The learned Commissioner of Central Excise, Ranchi, has vide Adjudication Order dated 24.02.2010 confirmed demand of Service Tax of Rs.4.17 crores approx plus equal penalty and applicable interest as proposed in the Show Cause Notice dated 16.10.2008 issued for the period 2005-06 to 2007-08 which has been assailed by the assessee in the present appeal.

2. The Appellant is a PSU engaged in the construction of buildings and infrastructural projects and is registered with the Service Tax Department for payment of Service Tax during the period in dispute. The Appellant has executed various construction related projects and has availed the abatement benefit as prescribed in Service Tax Notification no. 15/2004 dated 10.09.2004 and subsequent Notification No.01/2006 dated 01.03.2006, as was applicable during the period in dispute, to discharge payment of Service Tax on 33% of the gross amount charged. Effectively, the abatement of 67% that has been prescribed in the aforesaid notifications, have been availed while discharging Service Tax.

It is the case of the department that since the appellant has not included the value of materials supplied by the clients free of cost, which have been used in providing Construction Services by the appellant, the appellant is not entitled to avail the abatement benefit. Accordingly, the Department has disallowed the abatement claimed by the appellant and accordingly has raised the demand of Service Tax on the entire value of gross amount charged to the clients.

3. Heard Shri Akshat Agarwal, learned Advocate for the appellant and Shri Joydip Chattopadhyay, learned Authorized Representative for the Revenue, through video conferencing. The arguments advanced by the learned Counsel and the learned Authorized Representative have been duly considered.

4. We find that the issue stands decided squarely in favour of the assessee by the Hon'ble Supreme Court in the case of **Commissioner of Service Tax vs. Bhayana Builders (P) Ltd as reported in 2018 (10) GSTL 118 (SC)** wherein it has been held that value of goods supplied free of cost by the clients are not required to be included for

availing the abatement benefit in terms of the above notifications. The Apex Court in the aforesaid decision, while rejecting the appeal filed by the Revenue, has upheld the view taken by the Larger Bench of the Tribunal as reported in **2013 (32) STR 49 (Tri-LB).**

Taking note of the decision of the Tribunal's Larger Bench as above, the Hon'ble Delhi High Court in **Era Infra Engineering Ltd vs. UOI 2019 (20) GSTL 717 (Del)** has observed that:-

> ***"6.*** *This Court is of the opinion that the explanation to Item No. 7 of the Notification - which is been impugned in this case is worded in a neutral manner; it directs the inclusion of the gross value of the goods to the extent that goods are bought by the contractor, there can be no quarrel in its application. However, the problem in this case is that the petitioner claims that the goods were in fact supplied free of cost for the construction activity undertaken by its principal or the service recipient. In the light of the Intercontinental Consultants (supra) and Bhayana Builders (supra), the petitioner's grievance is well founded. It is accordingly held that in cases where goods are supplied free of cost by the service recipient to the construction contractor of the service provider, the value of such goods shall be excluded from the gross amount in terms of explanation to Item No. 7 of the Notification 1 of 2006."*

The above ratio has been consistently followed by the co-ordinate Benches of the Tribunal including the following cases:

- **Vantage International Management Co. vs. Comm of CGST, Mumbai 2021 (48) GSTL 265 (Tri-Mum)**
- **CCE, Bhopal vs. Sonali India 2014 (34) STR 47 (Tri-Del)**
- **Capital Builders vs. CCE Delhi 2015 (39) STR 478 (Tri-Del)**

Thus, in view of the legal position as stated above, the impugned demand cannot be sustained and is thus, set aside. The amount which has been paid in excess of the quantified demand by the Appellant may be refunded subject to quantification of the demand by the learned Adjudicating Authority. For the limited purpose of quantification of the demand, it is being remanded to the Ld. Adjudicating Authority.

The appeal is thus allowed by way of remand to the Adjudicating Authority. Stay Petition also gets disposed of.

(Operative part of the order was pronounced in the open Court.)

SD/
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

SD/

(RAJU)
MEMBER (TECHNICAL)

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