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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75590 of 2018

(Arising out of Order-in-Original No.16/COMMR/ST-II/KOL/2017-18 Dated 09/10/2017 passed by Commissioner of CGST & CX, Kolkata South.)

M/s. Paritosh Ghosh Construction Pvt. Ltd.
(117B, Manohar Pukur Road, Kolkata-700026)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Kolkata South Commissionerate
(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :

Mr. Manas Kumar Mitra, CA for the Appellant
Mr. P. K. Ghosh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.75724/2023

Date of Hearing : 15 June 2023
Date of Decision : 15 June 2023

PER R. MURALIDHAR

The Appellant was issued Show Cause Notice on the ground that they have provided "Works Contract Service and Manpower Service". In respect of Works Contract Services, the demand was for Rs.2,64,82,096/-. In respect of Manpower Recruitment or Supply Agency's Services, the demand was for Rs.78,77,216/-. The Appellant has submitted before the Adjudicating Authority that the Works Contract Service undertaken by them were for various State Government approved projects and hence no Service Tax is payable. In respect of Manpower Services, they submitted that Show Cause Notice has been issued based on the Profit and Loss Account & Balance Sheet figures wherein total cost incurred on account of Labour Charges has been given. They submitted that they have engaged the Manpower/Labour directly and also through the contractors. They submitted the Chartered Accountant's Certificate to this effect. The Adjudicating Authority after going through the factual evidence and the statutory provisions, dropped the demand of Rs.2,64,82,096/- on account of 'Works Contract Service'. In respect of the Manpower Services, after considering the Chartered Accountant's Certificate and details provided by the Appellant dropped the demand of Rs.53,60,316/- and confirmed the demand of Rs.25,16,900/-.

2. The Appellant has filed their Appeal on the ground that the penalty of Rs.25,16,900/- is required to be set aside. Subsequently, they have filed a Miscellaneous Application to allow them to make additional submissions in this Appeal wherein they have also contested the Service Tax amount of Rs.25,16,900/-.

3. The Learned Chartered Accountant appearing on behalf of the Appellant submits that the Adjudicating Authority has failed to consider the fact that the total amount shown in the P & L Account and Balance Sheet pertains to the total cost incurred on account of labour/manpower by the company. The Appellants have made direct payments to the workers. They have also engaged contractors who have supplied labour and charged for the same. Apart from this, they have engaged other contractors who did not supply any manpower but were carrying the job work through their workers. All these expenses got clubbed under one Heading when the Balance Sheet was prepared. Therefore, he submits that the confirmation of Service Tax amounting to Rs.25,16,900/- is required to be set aside along with interest and penalty thereon. During the earlier Hearing before us, the Appellant was directed to produce the copy of the Certificate issued by the Chartered Accountant which has now been produced by him. Based on these facts, the Learned Chartered Accountant prays that the present Appeal may be allowed.

4. The Learned AR submits that the Adjudicating Authority had properly considered the Certificate issued by the Chartered Accountant and has dropped the demand to the extent of Rs.53.60 Lakh on the ground that the Appellant had engaged direct workers and hence no Service Tax is leviable on the same. Therefore, the AR submits that due consideration was given to the Chartered Accountant's Certificate by the Adjudicating Authority and now no further concession can be granted to the Appellant as is being

pleaded by them in their Appeal. Accordingly, he submits that the Appeal filed by the Appellant is required to be rejected.

5. Heard both sides and perused the documents.

6. Admittedly the Show Cause Notice was issued towards the Manpower Services based on the Balance Sheet figures provided by the Appellant. The confirmed demand was arrived at Rs. 25,16,900/-, after the Appellant has produced copy of the Chartered Accountant's Certificate before the Adjudicating Authority. After considering the details given therein, the Adjudicating Authority has dropped the demand to the extent of Rs. 53.60 Lakhs and confirmed the demand only on the balance Service Tax amount of Rs.25.16 Lakhs. I have also gone through the Certificate issued by the Chartered Accountant M/s. Basu Mitra and Co. The Certificate given by them reads as under:-

> *"1) The Chartered Accountant Certificate on the basis of which Adjudicating Authority has confirmed the demand.*
>
> *2.) The Profit & Loss Account of the concerned years (2012-13 to 2015-16).*
>
> *<u>How the payments to the Labour Contractors have been accounted for in the Books of Accounts:</u>*
>
> *Payment to the Labour Contractors have been booked as "Labour Charges" in the Books of Accounts. <u>In the Annexure to the CA Certificate, the total Labour Charges as shown in the Profit & Loss Accounts are bifurcated into Labour Charges paid to contractors and Labour Charges paid to locally hired labours by the Appellant himself.</u>*
>
> *3.) Sample Labour Contractor bills of each year under consideration."[Emphasis supplied]*

7. From the Annexure B attached to this Certificate, it is seen that the total outflow of labour charges has been divided into two parts. One part pertains to the labour charges paid to contractors and the second part pertains to labour charges paid to locally hired workers by the Company. Based on such bifurcation, the Adjudicating Authority has correctly arrived at the quantum of Service Tax applicable for the Labour Charges paid to

the contractors. Therefore, I find no error in the order passed by the Adjudicating Authority. Accordingly, their Appeal contesting the confirmed demand of Rs.25,16,900/- is dismissed.

8. Coming to the agitation of penalty imposed, it is found from the records that the Appellant has paid entire amount of Rs.25,16,900/- after the adjudication order was passed. Therefore, the penalty is being reduced to 25% of Rs.25,16,900/- subject to the Appellant to paying interest amount along with this penalty within the 30 days from the date of receipt of this order.

9. In case the Appellant fails to pay the interest along with 25% penalty as per this Order within 30 days from the date of receipt of this order, the earlier confirmed penalty of Rs.25,16,900/- will be recoverable from the Appellant.

10. The Appeal is partly allowed thus.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja