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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.84 of 2010
Service Tax Appeal No.85 of 2010

(Arising out of Order-in-Original No.36-37/Commr./ST/Kol/2009-10 dated 22.12.2009 passed by Commissioner of Service Tax, Kolkata)

M/s East Coast Constructions & Industries Ltd.
No.4, Moores Road, Chennai-600006

Appellant

VERSUS

Commissioner of Service Tax, Kolkata
180, Shantipally Rajdanga Main Road, Kolkata-700107

Respondent

APPERANCE :

Shri K.K.Sanyal, Consultant for the Appellant
Shri A.Roy, Authorised Representative for the Respondent

WITH

Service Tax Appeal No.262 of 2010

(Arising out of Order-in-Original No.36-37/Commr./ST/Kol/2009-10 dated 22.12.2009 passed by Commissioner of Service Tax, Kolkata)

Commissioner of Service Tax, Kolkata
180, Shantipally Rajdanga Main Road, Kolkata-700107

Appellant

VERSUS

M/s East Coast Constructions & Industries Ltd.
No.4, Moores Road, Chennai-600006

Respondent

APPERANCE :

Shri A.Roy, Authorised Representative for the Respondent
Shri K.K.Sanyal, Consultant for the Appellant

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER N0. 75741-75743/2023

DATE OF HEARING : 14 .06.2023
DATE OF DECISION : 14 .06.2023

Per Ashok Jindal :

Both sides are in appeal against the impugned order. The assessee is in appeal for confirmation of the demand of service tax along with interest and Revenue is in appeal for not imposing penalty under Sections 76 and 77 for short payment of service tax by the assesse.

2. The facts of the case are that the appellant was engaged in the construction of residential complex for Indian Army and West Bengal Power Development Corporation Limited, the West Bengal Government Undertaking. The Revenue's appeal is that the respondents are liable to pay service tax under the category of "construction of residential complex". Therefore, they are liable to pay service tax.

2.1 Accordingly, the impugned proceedings were initiated and demand of service tax was confirmed along with interest and penalty was also imposed, but a portion of which the assessee has already paid, the penalty was not imposed.

2.2 Against the said order, both sides are in appeals.

3. The contention of the assessee is that vide CBEC Circular No.332/16/2010-TRU dated 24.05.2010, which clarified that in case the Government of India is service recipient and the service provided is directly to the Government of India for its personal use, the service tax is not leviable. It is further contended that they are the contractor and they are not sub-contractor and engaged by Army Station, Kolkata and the West Bengal Power Development Corporation Limited for construction of residential complex. Therefore, they are not liable to pay

service tax held by this Tribunal in the case of Khurana Engg. Ltd. Vs. Commissioner of Central Excise, Ahmedabad reported in 2011 (21) STR 115 (Tri.-Ahmd.), wherein it has been held that the service provided to Government of India directly for end use of residential complex by Government of India, there is no service tax is leviable. Therefore, it is prayed that they are not liable to pay service tax.

4. On the other hand, the ld.A.R. for the Revenue supported the impugned order and prayed that the penalty under Sections 76 & 77 of the Finance Act, 1994, are to be imposed for short payment of service tax.

5. Heard the parties and considered the submissions made by both the sides.

6. It is not in dispute that the assesse is engaged in the construction of flat for Indian Army and West Bengal Power Development Corporation Limited and these residential complexes are for personal use of Indian Army and WBPDCL. The CBEC has clarified vide its Circular No.332/16/2010-TRU dated 24.05.2010, which is incorporated herein below :

> *"As per the information provided in your letter and during discussions, the Ministry of Urban Development (GOI) has directly engaged the NBCC for constructing residential complex for Central Government Officers. Further, the residential complexes so built are intended for the personal use of the GOI which includes promoting the use of complex as residence by other persons (i.e. the Government officers or the Ministries). As such the GOI is the service receiver and NBCC is providing services directly to the GOI*

for its personal use. Therefore, as for the instant arrangement between Ministry of Urban Development and NBCC is concerned, the service tax is not leviable. It may, however, be pointed out that if the NBCC, being a party to a direct contract with GOI, engages a sub-contractor for carrying out the whole or part of the construction, then the sub-contractor would be liable to pay service tax as in that case, NBCC would be the service receiver and the construction would not be for their personal use."

7. We Further take note of the fact that in the case of Khurana Engg. Ltd. (supra), this Tribunal has observed as under :

"Further, in view of the fact that on merits, we have held that service provided by the appellant is to be treated as service provided to Govt. of India directly and end use of the residential complex by Govt. of India is covered by the definition "Personal Use" in the explanation to definition of residential complex service, the other aspects need not be considered. In view of the discussion above, the impugned order cannot be sustained and accordingly the same is set aside. Appeal is allowed with consequential relief to the appellant."

8. As it is not in dispute that the residential flats constructed by the assessee, are for personal use of Indian Army and WBPDCL, which are a part of Government of India/State Government. Therefore, the said service provided by the assessee is to Government of India for personal use. Therefore, in the light of the CBEC Circular No.332/16/2010-TRU dated 24.05.2010, the assessee is not liable to pay service tax.

9. In that circumstances, we set aside the impugned demand confirmed against the assesse. Consequently, the appeals filed by the assesse are allowed.

10. As no demand is sustainable against the assesse, therefore, question of imposing penalty does not arise.

11. Accordingly, we do not find any merit in the appeal filed by the Revenue and the same is dismissed.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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