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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.246 of 2011

(Arising out of Order-in-Original No.49/Commr./ST/Kol/2010-11 dated 15.03.2011 passed by Commissioner of Service Tax, Kolkata)

M/s Ober Construction Enterprises Pvt. Ltd.
CB-57, Salt Lake City, Sector I, Kolkata-700064

Appellant

VERSUS

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

Respondent

APPERANCE :

None for the Appellant
Shri J.Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO…75900/2023

DATE OF HEARING : 20 .06.2023
DATE OF DECISION : 20 .06.2023

Per Ashok Jindal :

By way of impugned order, the demand of service tax of Rs.63.82 lakhs and equal amount of penalty has been confirmed under Section 78 of the Finance Act, 1994.

2. The appellant was engaged in civil constructions and providing construction services in infrastructure projects i.e. Port, Railway, Roads, Bridge and Government Office etc., which were exempted from service tax.

2.1 In the month of June, 2006, the appellant received a communication from the Service Tax Department and called for some information. On the basis of records submitted by the appellant, a show-cause notice dated 09.10.2009 was issued to the appellant to demand service tax on "Erection, Commission or Installation Service", "Commercial or Industrial Construction Service" and "Construction of Complex Service" to the appellant.

2.2 The appellant contested the show-cause notice.

2.3 Therefore, the impugned order has been passed demanding service tax on the appellant.

3. None appeared on behalf of the appellant.

4. The ld.A.R. for the Revenue, reiterated the findings of the impugned order.

5. On perusal of the records, we find that the above mentioned services have been supplied by the appellants along with materials, which are not disputed by the Adjudicating Authority.

6. In that circumstances, the activity undertaken by the appellant merits classification under the category of "Works Contract Service". For prior to the period 01.06.2007, no service tax was payable by the appellant as held by the Hon'ble Supreme Court in the case of Larsen and Toubro Limited Vs. Commissioner-2018 (18) GSTL J168 (SC).

7. We further take note of the fact that for the period post 01.06.2007, the proper classification of the activity undertaken by the appellant merits classification under the category of "Works Contract Service". The show-cause notice has not been issued to the appellant to demand under "Works Contract Service" .

8. Therefore, we hold that all the demands against the appellant are not sustainable.

9. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-

(K.Anpazhakan)
Member (Technical)

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