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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.312 of 2011

(Arising out of Order-in-Original No.06/ST/Ayukt/2011 dated 31.03.2011 passed by Commissioner of Central Excise & Service Tax, Patna-I.)

M/s. National Projects Construction Corporation Limited
(Kahalgaon at Kahalgaon Super Thermal Power Project, P.O.-Kahalgaon, S.T.P., District-Bhagalpur, Bihar.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Patna

.....Respondent

(C.R. Building, Bir Chand Patel Path, Patna, Bihar.)

<u>APPEARANCE</u>

NONE for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Revenue

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

<u>FINAL ORDER NO. 76197/2023</u>

DATE OF HEARING : 25 July 2023
DATE OF DECISION : 25 July 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order wherein demand of Service Tax has been confirmed against the appellant under the category of 'Commercial & Industrial Construction Services' and 'Management, Maintenance & Repair Services'.

2. The facts of the case are that the appellant is a Govt. of India Undertaking and undertakes various works allotted to them through tenders. The appellant entered into the execution of works allotted to them against 7(seven) agreement, whose details are as under:-

a) The first agreement was made on 10.01.2004 for the work of construction of two (02) no. of WBM road from North to South direction at stage-II area amounting to Rs.11,47,705/-.

b) The second agreement was made on 10.02.2004 for the work of civil work for raising of Ash Dyke Lagoon-II amounting to Rs.1,37,84,625/-.

c) The third agreement was made on 14.02.2005 for the work of supply of Ballast by Railway wagon and spreading at MGR track of KHSTPP amounting to Rs.31,73,600/-.

d) The forth agreement was made on 22.02.2006 for the work of civil work for raising ash dyke Lagoon-II amounting to Rs.3,81,26,420/-.

e) The fifth agreement was made on 03.07.2006 for the work of restoration of Embankment along Naria Nallah at Lagoon-II in ash dyke area amounting to Rs.27,11,919.52/-.

f) The sixth agreement was made on 07.11.2006 for the work of construction of 25 nos. of 'D' type, 32 nos. 'C' type and 160 nos. 'B' type quarters and 03 nos. electrical sub-station building including internal electrification in township amounting to Rs.11,51,26,380.07/-

g) The last agreement was made on 18.04.2007 for the work of civil works for second raising of Ash Dyke Lagoon-II but no details regarding the contract amount etc has been provided.

3. The appellant is executing those works, but not paying Service Tax as the appellant was registered under 'Works Contract' with State Government of Bihar w.e.f. 31.07.1999 and discharging their necessary tax liability under the State Act. It is the contention of the appellant

that they have rendered services relating to roads, bridges, railways, dams etc. which are not taxable services, but it is alleged that appellants were engaged in the 'Commercial & Industrial Construction Services', therefore, a show cause notice was issued to the appellant to demand service tax which was adjudicated by the adjudicating authority and partly demand in the show cause notice was confirmed along with interest. Against the said order, the appellant is before us.

4. We have gone through the records placed before us.

5. We find that all the agreements under which the works has been executed by the appellant are relating to roads, bridges, railways, dams etc. and appellant was also registered as works contractor with Bihar Government w.e.f. 31.07.1991. In that circumstances, if registered as works contractor and as per the tenor of the agreements, the appellant is paying State Tax on the supply part of the contract amount, in that circumstances, the correct classification of the services in question is 'Works Contract Services'. During the impugned period, i.e. September 2003 to December 2007 and there is no proposal to demand Service Tax from the appellant under 'Works Contract Services'. Particularly prior to 01.06.2007, the 'Works Contract Services' was not a taxable services, therefore, as held by the Hon'ble Apex Court in the case of CCE & C, Kerala v. Larsen & Toubro Ltd. [2015 (39) STR 913 (SC)], it is held by the Hon'ble Apex Court that prior to 01.06.2007, the 'Works Contract Services' was not into the statute book, therefore, no service tax is payable on the 'Works Contract Service' prior to 01.06.2007. Further, post 01.06.2007, there is no proposal to demand Service Tax form the appellant under 'Works Contract Services' therefore, we hold that no service tax is payable by the appellant under 'Commercial & Industrial Construction Services'.

6. In view of the above observations, we hold that whole of the demand is not sustainable in the eyes of law and the same are classifiable under 'Works Contract Services'.

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

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

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

sm