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

REGIONAL BENCH - COURT NO.1

**Service Tax Appeal No.274 of 2012**

(Arising out of Order-in-Original No.11/Commissioner/CE/Haldia/Adjn/2012 dated 27.03.2012 passed by Commissioner of Central Excise, Haldia Commissionerate, Kolkata.)

**M/s. Kalika Stone Works**
(Vill: Rupnarayanpur, P.O.Jakpur, P.S. Kharagpur, Paschim Medinipur, West Bengal.)
**...Appellant**

*VERSUS*

**Commissioner of Central Excise & Service Tax, Haldia**
**.....Respondent**
(15/1, Strand Road, Custom House, M.S. Building, Kolkata-700001.)

**<u>APPEARANCE</u>**

Shri Suresh Bhutra, Advocate for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Revenue

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

**<u>FINAL ORDER NO. 76264/2023</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 them under the category of 'management maintenance or repair services'.

2. The facts of the case are that the appellant was engaged in construction of road under the category of 'repair and maintenance of road having assigned to them by National Highway Authority of India at various places. Revenue is of the view that the said activity comes under the category of 'management maintenance or repair services' of road, therefore, they are liable to service tax. Accordingly, a show cause notice dated 21.10.2010 was issued to the appellant to demand service tax for the period 16.05.2005 to 26.07.2009 by invoking

extended period of limitation. The matter was adjudicated, demand of service tax along with interest was confirmed and penalty was also imposed under section 77 of the Finance Act, 1994. Aggrieved from the said order, the appellant is before us.

3. The appellant submits that that it is not disputed fact that the appellant entered into an agreement with National Highway Authority of India for maintenance and repair of road, which is exempt by Notificatino No.24/2009 dated 26.07.2009. Therefore, demand of service tax is not sustainable against the appellant. To support his contention he relied on the decision of this Tribunal in the case of J.K.Constructions v. Commissioner of Central Excise, Chennai [2012 (27) S.T.R. 507 (Tri.-Chennai)], Dwaraka Constructions v. The Commissioner of Customs, Central Excise & Service Tax in Service tax Appeal No.287 of 2012 vide Final Order No.31209/2020 dated 09.12.2020.

4. On the other hand, the Ld.AR for the department supported the impugned order and submits that the exemption available to the assessee is prospective therefore demand is rightly confirmed.

5. Heard the parties, considered the submissions.

6. We find that an amendment was brought in Finance Act, 2012, which read as follows;-

> "97(1) notwithstanding anything contained in section 66, no service tax shall be levied or collected in respect of management, maintenance or repairs of roads, during the period on and from the 16$^{th}$ day of June, 2005 to 26$^{th}$ day of July, 2009 (both days inclusive)".

The said amendment is applicable from 16.06.2005 onwards and by the said amendment, the services in relation to management, maintenance or repairs of roads during the period 16.06.2005 to 26.07.2009 are exempted from payment of service tax and in this case the period is 16.06.2005 to 26.07.2009, therefore, we hold that the activity undertaken by the appellant for 'management, maintenance or repair of road' is exempt in terms of section 97(1) of the Finance Act, 2012. Same view was taken by this Tribunal in the cases of

J.K.Constructions (supra) and Dwaraka Constructions (supra). Therefore, we do not find any merits in the impugned order. The same is set aside and appeal is allowed 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**