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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.325 of 2012

(Arising out of Order-in-Appeal No.21/Commissioner/CE/Haldia/Adjn/2012 dated 28.03.2012 passed by Commissioner of Central Excise, Haldia Commissionerate, Kolkata.)

M/s. Haldia Development Construction
(Durgachak Colony, Haldia, East Medinipur, Pin-721602.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Haldia

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

APPEARANCE

Shri Abhijit Biswas & Shri Nilendu Chakraborty, both Advocates for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

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

FINAL ORDER NO. 76380/2023

DATE OF HEARING : 8 August 2023
DATE OF DECISION : 8 August 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order for confirmation of demand of service tax against the appellant for the period April 2005 to march 2010.

2. The facts of the case are that the appellant was providing construction services with regard to commercial and industrial building or civil structures. During the period 01.04.2005 to 31.03.2010, the appellant was paying service tax to the department. On scrutiny of records, it was found that the appellant has rendered construction services to their clients namely M/s.Haldia Petrochemicals Ltd., M/s. Marcas Oil &

Chemicals, M/s. MCCPTA India Corp. (P) Ltd., M/s. Adani Wilmar and M/s. Haldia Dev. Authority. The appellant paid service tax on part of the services and as per their ST-3 returns made short payment amounting to Rs.97,92,582/-, therefore a show cause notice was issued to the appellant. The appellant contested the show cause notice contending that the appellant was engaged in the activity of 'management, maintenance and repair of the road and the said activity was not taxable in terms of section 97 of the Finance Act, 2012 and the repair and maintenance of roads have been exempted from payment of service tax during the impugned period vide Notification No.24/2009-ST dated 27.07.2009 from 16.06.2005 to 26.07.2009 and for the post period. In that circumstances, he is not required to pay service tax on the activity of management, maintenance and repairs of the road.

3. He further submitted that the works were executed by the appellant along with material and the merit classification of the said service is under 'works contract service' which is taxable from 01.06.2007 and the demand has been sought to be recovered from the appellant under 'construction of commercial and industrial service' service during the impugned period, therefore, the demand is not sustainable as held by this Tribunal in the case of Voora Shreeram Construction Pvt.Ltd. v. CCE & ST, Chennai [2020 (35) GSTL 574(Tri.-Chennai)] following the decision of Hon'ble Apex Court in the case of CCE & C, Kerala v. Larsen & Toubro Ltd. [2015 (39) STR 913 (SC)], wherein this Tribunal has observed as under:-

> ***"4.*** *After hearing both sides, and on perusal of records, we find merit in the Ld. Advocate is correct in his assertion that the issue in dispute is squarely covered by the case laws cited by him, in particular, that of the Hon'ble Apex Court in M/s. Larsen & Toubro Ltd. (supra,) for the period up to 1-6-2007.*
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> ***5.*** *For the period after 1-6-2007, the Chennai Bench of the CESTAT in the case of M/s. Real Value Promoters Pvt. Ltd. & Ors. v. Commissioner of G.S.T & Central Excise, Chennai & Ors. vide Final*

> *Order Nos. 42436-42438/2018, dated 18-9-2018 have extrapolated the ratio laid down by the Hon'ble Apex Court in M/s. Larsen & Toubro Ltd. (supra) and held that even after 1-6-2007, Service Tax liability for composite contracts can only be demanded under works contract service and not under CICS, etc. For this reason, the impugned order demanding the amount of tax liability under CICS for a composite contract will not survive and will require to be set aside, which we hereby do."*

4. As discussed hereinabove, we hold that the merit classification of the construction services rendered by the appellant were along with supply and service both under a composite contract. In that circumstances, merit classification is works contract service and no demand has been raised under 'works contract service', therefore, we hold that the demand of service tax is not sustainable against the appellant.

5. With regard to management, maintenance of road that the said service has already been exempted by the Finance Act, 2012, therefore, on the said service, the appellant is not liable to pay service tax.

6. In that circumstances, we do not find any merit in the impugned order. Therefore, the same is set aside and the appeal filed by the appellant 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)

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