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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.9 of 2012

(Arising out of Order-in-Original No.Commr./B-I/ST-14/2011 dated 11.10.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar I)

M/s Metro Builders Orissa Private Limited
Metro River View Complex, Sunshine Field Road, Cuttack-753002, Odisha

Appellant

VERSUS

Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar I
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha

Respondent

APPERANCE :

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

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

FINAL ORDER NO…76399/2023

DATE OF HEARING : 03 .08.2023
DATE OF DECISION : 03 .08.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein demand of service of service tax was confirmed against them under "Commercial or Industrial Construction Services".

2. The facts of the case are that the appellant is a Private Limited Company and registered themselves under the category of "Commercial or Industrial Construction Services" and investigation was conducted wherein list of constructions were undertaken as well as the annual income derived from the financial year 2004-05 to 2007-08, was undertaken.

2.1 During the course of investigation, the following documents were submitted by the appellant :

(a) A list of construction of works undertaken ;

(b) A list of annual income derived for the financial year 2004-05 to 2007-08 ;

(c) Sample copies of contracts made with its clients

(d) Copies of balance sheets for the financial year 2004-05, 2005-06, 2006-07 & 2007-08.

2.2 After scrutiny of the said documents, it was revealed that the appellant has undertaken civil construction work, like, construction of buildings and civil structure for Indian Oil Corporation at Paradeep and for M/s Jindal Stainless Limited.

2.3 The appellant was also awarded the work of construction of three storied, construction of quarter guard room and armory and stores including all civil and electrical work, construction of welfare centre with all civil and electrical works, construction of multipurpose hall including all civil and electrical fittings, construction of shop, garage, pump house along with design, engineering, testing, construction of supporting structures etc. for Indian Oil Corporation Limited. The appellant has also undertaken the works in relation to construction of Boundary Wall comprising earthwork, excavation, sand filling, shuttering, steel reinforcement and plastering.

2.4 The Revenue is of the view that all these services are under the category of "Commercial and Industrial Construction Services" and therefore, a show-cause notice dated 12.10.2010 was issued to the appellant to demand service tax for the period from 2004-05 to 2007-08 by invoking extended period of limitation.

2.5 The show-cause notice was adjudicated and the demand was confirmed.

2.6 Against the said order, the appellant is before us.

3. Heard the ld.A.R. for the Revenue and gone through the impugned order.

4. After going through the impugned order, we find that the activity undertaken by the appellant is a service along with supply of material. The merit classification of the service is as "Works Contract Service", which is taxable from 01.06.2007 as held by the decision of the Hon'ble Apex Court in the case of Larsen & Tourbro Limited reported in 2015 (39) STR 913 (S.C.), wherein the Hon'ble Apex Court has observed as under :

> "***24.*** *A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines "taxable service" as "any service provided". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not*

composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract.

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41. *We are afraid that there are several errors in this paragraph. The High Court first correctly holds that in the case of composite works contracts, the service elements should be bifurcated, ascertained and then taxed. The finding that this has, in fact, been done by the Finance Act, 1994 Act is wholly incorrect as it ignores the second Gannon Dunkerley decision of this Court. Further, the finding that Section 67 of the Finance Act, which speaks of "gross amount charged", only speaks of the "gross amount charged" for service provided and not the gross amount of the works contract as a whole from which various deductions have to be made to arrive at the service element in the said contract. We find therefore that this judgment is wholly incorrect in its conclusion that the Finance Act, 1994 contains both the charge and machinery for levy and assessment of service tax on indivisible works contracts."*

5. As the activity undertaken by the appellant is under "Works Contract Service", no demand has been made by the appellant under the category of "Commercial and Industrial Construction Services".

6. Therefore, we set aside the impugned demand confirmed against the appellant.

7. Accordingly, 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)

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