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

REGIONAL BENCH – COURT NO.1

<u>Service Tax Appeal No.75021 of 2017</u>
(On behalf of Appellant)

(Arising out of Order-in-Original No.91/PR.COMMR/ST-I/KOL/2016-17 dated 03.10.2016 passed by the Commissioner of Service Tax I, Kolkata)

M/s Allied Infrastructure & Projects Private Limited
P-16,Bentick Street, A.C.Mansion, Kolkata-700001

Appellant

VERSUS

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

Respondent

<u>APPERANCE :</u>

Shri Rajeev Agarwal, Advocate for the Appellant
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO. 76553/2023

<u>DATE OF HEARING : 23 .08.2023</u>
<u>DATE OF DECISION : 23 .08.2023</u>

<u>Per Ashok Jindal :</u>

The appellant is in appeal against the impugned order demanding service tax under the category of "Works Contract Service".

2. The facts of the case are that the appellants have the declaration in Form VCES-1 declaring tax dues amounting to Rs.19,60,960/- instead of 73,30,752/- for the period April, 2010 to December, 2012 for providing taxable service, namely, "Works Contract Service" under Voluntary Compliance Encouragement Scheme (VCES), 2013.

2.1 An investigation was initiated against the appellant on 18.12.2013 and it was revealed that the appellant has provided taxable service to East Central Railways, M/s Jindal Steel and Power Limited and M/s

Bhartia Infra Projects Limited during the period from 2010-11 to 2013-14. From the work order placed by M/s Jindal Steel & Power Limited, it appears that the service provided by the appellant is under the category of "Works Contract Service" and subsequently, under Section 66E of the Finance Act w.e.f. 01.07.2012. From the work orders of M/s Jindal Steel and Power Limited and the Bills, it appears that the service tax liability of the appellant under "Works Contract Service" provided to M/s Jindal Steel & Power Limited during the said period, amounts to Rs.39,09,902/-.

2.2 Further, from the contract agreement of M/s Bhartia Infra Project Limited with the appellant, it appears that the appellant has provided Commercial and Industrial Construction Service during the period from 2010-11 to 2012-13, whereas the appellant has declared only Rs.19,60,960/-, in their VCES I application during the period from 2010-12 to December, 2012.

2.3 Therefore, it was alleged that the appellant has not declared the correct tax liability and hence, proceedings were initiated against the appellant by issuance of show-cause notice. The demand of service tax was confirmed along with interest and an equal amount of penalty was also imposed.

2.4 Aggrieved the said order, the appellant is before us.

3. The ld.Counsel for the appellant submits that the appellant was providing construction under "Works Contract Service" to M/s Jindal Steel and Power Limited & East Central Railways during the impugned period by way of construction of railway siding and the said service was excluded from payment of service tax upto 30.06.2012 under Section

65(105)(zzzza) of the Finance Act, 1994 and from 01.07.2012, the service was exempted by Sl.No.14 of Notification 25/2012 dated 20.06.2012. Therefore, the appellant was not liable to pay service tax. In that circumstances, it is prayed that the impugned order is to be set aside.

4. Heard the parties and considered the submissions.

5. On going through the records placed before us, it is the fact on record that the appellant was providing services for construction of railways . The said service was exempted from service tax in terms of Section 65(105)(zzzza) of the Finance Act, 1994 till 30.06.2012, thereafter, w.e.f. 01.07.2012, exempted by Sl.No.14 of Notification 25/2012 dated 20.06.2012.

6. In that circumstances, we hold that the appellant is not liable to pay service tax as the appellant was engaged in the service of construction for railways. Therefore, we hold that that during whole of the period, the appellant was not liable to pay service tax at all. Therefore, the proceedings against the appellant are dropped and the demands confirmed against the appellant are set aside.

7. In the result, the impugned order is set aside and the 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)

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