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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No.99 of 2012

(Arising out of Order-In-Original No.45/Commr/ST/Kol/2011-12 dated 07/12/2011 passed by Commissioner of Service Tax, Kolkata.)

M/s. Nu Calcutta Construction Co.
(25 A & B, Nasiruddin Road, Kolkata-700017)

Appellant

VERSUS

Commr. of Service Tax, Kolkata
(180, Shanti Pally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :
Mr. Abhijit Biswas, Advocate for the Appellant
Mr. P. K. Ghosh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77309/2023

Date of Hearing : 10 October 2023
Date of Decision: 10 October 2023

PER R. MURALIDHAR:

The Appellant is providing Erection Commissioning and Installation service and Commercial or Industrial Construction, Maintenance or Repair and Execution of Works Contract Service. After scrutiny of ST-3 Returns, it was noticed that the Appellant has not fully discharged the Service Tax liability. Accordingly, Show Cause Notice was issued on the ground that they have claimed abatement and also have taken the Cenvat Credit and utilized the same towards payment of Service Tax. It was alleged that they have simultaneously availed the Cenvat Credit and also availed the benefit of abatement. After due process, the Adjudicating Authority confirmed the demand along with interest and penalty. Being aggrieved, the Appellant is before the Tribunal.

2. The Learned Counsel appearing on behalf of the Appellant submits that they have submitted separate statement to the lower

authority for pure service contract wherein no abatement was availed but Cenvat Credit was taken. They have also submitted the statement showing composite contract where they did not avail the Cenvat Credit. The Learned Counsel also submits that these details were not properly considered by the lower authorities while confirming the demand.

3. The Learned AR reiterates the findings of the lower authority and submits that the Appellant has contravened the provision by simultaneously availing the abatement as well as utilizing the Cenvat Credit.

4. Heard both sides and perused the documents.

5. After going through the Appeal records, it is seen that the Appellant in their reply to Show Cause Notice, has made the following submissions:-

1. *Statement showing "contract wise-service wise"- payment received and input service details of 'pure service contracts' where they did not avail abatement benefit but availed Cenvat Credit. The statement along with some sample copy of contracts are together marked with letter-Annexure 'A'.*
2. *Statement showing "contract wise- service wise" payment received against 'composit contracts' where they availed abatement benefit but did not avail Cenvat credit. The statement along with some sample copy of contracts are together marked with letter-Annexure 'B'.*

6. No finding have been given by the Adjudicating Authority as to whether verification was carried out for the statements submitted by the Appellant.

7. The Adjudicating Authority in Para 17 has held that the nature of Service Tax provided falls under the category of 'completion and finishing services'. He has held as under:-

> *"17. As discussed above, the nature of service provided by them comes under the category of completion and finishing services' under*

Commercial Construction Service, therefore, by virtue of condition given under column 4 of the said notification where the taxable services provided are only in nature of completion and finishing services in relation to building or civil structure, the benefit of notification will not be available to them. So, the instant demand raised on the above issue is sustainable on merit."

8. The Appellant claims that since they were not put to notice on this count, they could not address the same while filing their reply before the Adjudicating Authority.

9. Since the factual details are required to be properly verified, we feel that the Appeal has to be remanded to the Adjudicating Authority.

10. We direct the Adjudicating Authority to go through the two specific statements filed by the Appellant, wherein they have bifurcated the contracts on which Cenvat has been taken and contracts wherein, no Cenvat was taken. These details should be verified and detailed order is required to be passed on this count while passing the order.

11. Further, the Appellant should be given opportunity to file documentary evidence towards the nature of service provided by them. Based on the actual contract, conclusion is to be drawn as to whether such contracts are towards proper construction services or the same are in the nature of finishing services. Principles of natural justice are required to be followed.

12. The Adjudicating Authority is directed to complete the proceedings within 4 months from the date of receipt of this Order.

(operative part of the order was pronounced in the open court.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Pooja