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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.76264 of 2018
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.01/SH/CE(A)GHY/18 dated 10.01.2018 passed by Commissioner (Appeals) of CGST & Excise, Guwahati)

Shri Chandan Sengupta
Pamnagar Road, No.2, Agartala, Tripura (West), 799002

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Shillong
Morellow Compound, M.G.Road, Shillong-793001

Respondent

APPERANCE :
Shri Pranab Sikdar, Consultant for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO.75145/2024

DATE OF HEARING : 23.01.2024
DATE OF DECISION : 23.01.2024

Per Ashok Jindal :

This is second round of limitation.

2. In the earlier round of litigation, the matter was remanded to the adjudicating authority.

3. As in the earlier round of litigation, the appeal of the appellant was dismissed on the issue of jurisdiction. Therefore, this Tribunal remanded the matter back to the ld.Commissioner (Appeals) to decide the appeal on merits without considering the issue of jurisdiction. In the remand proceedings, the impugned order has been passed.

4. The facts of the case are that the appellant is a contractor and engineer and engaged in various construction activities in Tripura. It is alleged that the appellant has provided taxable service to M/s

Dharampal Premchand Limited under the category of "Commercial & Industrial Construction Services" and not paid the service tax. Accordingly, a show-cause notice was issued to the appellant on the basis of Data procured from M/s Dharampal Premchand Limited, Agartala. Subsequently, corrigendum dated 14.07.2006 was issued to the appellant.

4.1 In response during investigation, the appellant obtained the service tax registration in the year 2005 and deposited the service tax as soon as they received the gross amount of service tax and education cess were received from the service recipient, M/s Dharampal Premchand Limited, Agartala.

4.2 The adjudicating authority held that the appellant has provided services under the category of "Commercial & Industrial Construction Services" w.e.f. October, 2004 and it was also held that the registration was obtained in the year 2005 and they have received the payments during the period from 30.12.2004 to 20.02.2006 and the service tax was not paid by the appellant. Accordingly, it was held that the appellant has suppressed the facts. Therefore, the penalties were sought to be imposed on the appellant.

4.3 An appeal was filed before the ld.Commissioner (Appeals). The ld.Commissioner (Appeals) dropped the proceedings against the appellant on merit as well as procedural grounds.

4.4 The said order was challenged by the revenue before this Tribunal and this Tribunal remanded back to the ld.Commissioner (Appeals) to decide the issue on merit only.

4.5 In remand proceedings, the ld.Commissioner (Appeals) held that the issue of challenging classification, cannot be accepted as the same has not been agitated before the adjudicating authority and the appellant has failed to produce any documentary evidence in support of their contentions. As the appellant contested before the ld.Commissioner (Appeals) that they were engaged in the activities of erection, pre-fabricated structures, which are not covered under the category of "Commercial & Industrial Construction Services" during the impugned period, which was not considered by the ld.Commissioner (Appeals).

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

5. Heard both the parties.

6. On going through the impugned order, we find that the ld.Commissioner (Appeals) has held that as the appellant has not challenged the issue of classification before the adjudicating authority, therefore, he confirmed the demand and he also held that no documentary evidences has been produced before the adjudicating authority.

7. As it is a case of classification of the service provided by the appellant, which is a legal issue, the same can be raised at any stage of time. Therefore, we hold that the ld.Commissioner (Appeals) was required to decide the issue first on classification whether the activity undertaken by the appellant of erection, pre-fabricated structures is covered under "Commercial & Industrial Construction Services" or not.

8. It is also observed in the impugned order that the appellant has failed to produce the documentary evidences before the adjudicating

authority as well as before the ld.Commissioner (Appeals) in support of their claim.

9. In that circumstances, it would be appropriate and in the interest of justice, to remand the matter to the adjudicating authority with the direction to the appellant to provide the documentary evidences in support of their claim with regard to the classification.

10. Therefore, we set aside the impugned order and remand the matter back to the adjudicating authority to decide first the issue of classification on production of documentary evidences by the appellant and thereafter, to pass an appropriate order in accordance with law.

11. At this stage, the appellant is directed to produce the documentary evidences within thirty days from the date of receipt of this order. Thereafter, the adjudicating authority shall pass an appropriate order in accordance with law within sixty days.

12. In view of the above, the appeal is disposed off by way of remand.

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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