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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75017 of 2014
(On behalf of Appellant)

(Arising out of Order-in-Appeal No.66/Bol/2013 dated 07.06.2013 passed by Commissioner (Appeals) of Central Excise, Kolkata II)

M/s Kumar Construction
16th School Road, Ramkrishnapally, Durgapur-713213

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Bolpur
Nanoor Chandidas Road, SIAN, Dist.-Birbhum, Bolpur, Pin-731204

Respondent

APPERANCE :

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

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

FINAL ORDER NO.75231/2024

DATE OF HEARING : 08.02.2024
DATE OF DECISION : 08.02.2024

Per Ashok Jindal :

The appellant is in appeal against the impugned order wherein the demand has been confirmed under Section 73(2) of the Finance Act, 1994 under the category of "Commercial or Industrial and Construction Services".

2. The facts of the case are that the appellant provided construction services for the period from 2004-05 to 2008-09 to M/s Durgapur Steel Plant.

2.1 An investigation was conducted against the appellants as they have paid service tax on the services provided under the category of "Commercial or Industrial and Construction Services".

2.2 A show-cause notice was issued to the appellant.

2.3 A demand of service tax was confirmed along with interest and penalty was also imposed on the appellant.

2.4 The said order was challenged by the appellant before the ld.Commissioner (Appeals) on the ground that as they have provided services along with materials and they have paid the service tax to the Department.

2.5 The ld.Commissioner (Appeals) upheld the adjudication order.

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

3. None appeared on behalf of the appellant. Nor any request for adjournment has been received despite notice. But the matter has been taken up for disposal as the same pertains in the year 2014.

4. The ld.A.R. for the Revenue submitted that in this case, for want of evidence, the benefit of Notification No.1/2006-ST dated 01.03.2006 was not given to the appellant, therefore, the impugned order has been rightly passed.

5. Heard the ld.A.R. for the Revenue.

6. We find that in this case, if the appellant is provided the Commercial, Industrial and Construction Services along with materials, then the appellant is entitled to the benefit of Notification No.1/2006-ST dated 01.03.2006.

7. In this case, it is not in dispute that the appellant is providing the services along with materials. Therefore, the appropriate classification of the above services is under "Works Contract Service" and no demand of service tax is raised against the appellant under "Works Contract Service". Therefore, following 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."

7. We hold that the appropriate classification of the impugned service is under "Works Contract Service" and no demand of service tax has been made under "Works Contract Service" from the appellants under "Works Contract Servie". In that circumstances, the demand of service tax is not sustainable.

8. Accordingly, we set aside the impugned order and allow the appeal with consequential relief, if any.

9. We further take note of the fact that as the amount paid by the appellant has been collected from the service recipient and paid thereof, in that circumstances, the appellant is not entitled to claim refund of the service tax amount deposited with the Department, which has been collected from the service recipient.

10. Appeal is disposed off in the above terms.

(Dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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