**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL**
**EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No. 75087 of 2015**

**WITH**

**Service Tax Misc. [Addl. Evidence] Appln. No. 75077 of 2024**

(on behalf of Appellant)

(Arising out of Order-in-Original No. 25/COMMR/ST/BOL/14 dated 21.10.2014 passed by the Commissioner of Central Excise, Durgapur, City Centre, Satyajit Roy Sarani, Durgapur – 713 216)

**M/s. S.N. Construction** **: Appellant**
Srichandapur, Nityanandapur,
District: Bankura, West Bengal – 722 142

**VERSUS**

**Commissioner of Central Excise and Service Tax** **: Respondent**
Sian, Bolpur,
District: Birbhum

**APPEARANCE:**

Shri S.P. Siddhanta, Consultant for the Appellant

Shri J. Chattopadhyay, Authorized Representative for the Respondent

**CORAM:**

**HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)**
**HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 75253 / 2024**

DATE OF HEARING / DECISION: 20.02.2024

**Order : [Per Shri Ashok Jindal]**

The appellant is in appeal against the impugned order and also filed a miscellaneous application for bringing additional documents on record.

2. The facts of the case are that the appellant was engaged in the activity of construction, production and supply of labour, loading and unloading services.

During the period from 2007-08 to 2010-11 (up to 31st March, 2011), the assessee was required to pay Service Tax on the payment received against the services rendered by the appellant to the service recipient. The appellant was paying Service Tax on receipt basis, but with effect from 01.04.2011, the point of taxation was changed and the assessee was required to pay Service Tax at the time of providing the services or issuing bills for the services rendered. In these set of facts, investigation was conducted against the appellant.

3. After investigation, a demand of Service Tax was raised against the appellant vide the impugned order on the ground that the appellant has not paid Service Tax for the period from 2007-08 to 2010-11 on receipt basis. Against the said order, the appellant is before us.

4. After passing the impugned order, the appellant had approached the adjudicating authority to provide the details of calculation and chart of demand(s) raised against the appellant. On having found that the calculation adopted by the adjudicating authority was not correct, the miscellaneous application is filed by the applicant for bringing additional documents on record.

5. After hearing the parties, we find that in this case, the claim of the appellant is that they have paid the Service Tax for the services rendered during the period from 2007-08 to 2010-11 on receipt basis – a part of the payment being before 01.04.2011 and the other part being after 01.04.2011. The same is required to be correlated at the adjudicating authority's end, which was not done by the

adjudicating authority properly. In these circumstances, we are of the view that in the interests of justice, the matter is required to be remanded back to the adjudicating authority to find out how much of the payment for the services rendered by the appellant was received after 01.04.2011 and whether the appellant has discharged Service Tax on those payments, for the period from 2007-08 to 2010-11.

5.1 Therefore, we set aside the impugned order and remand the matter back to the adjudicating authority to correlate the payment received after 01.04.2011 for the period from 2007-08 to 2010-11. The appellant is also directed to co-operate with the adjudicating authority for correlation of the amount of Service Tax paid by them for the said period. In these terms, we remand the matter back to the adjudicating authority to decide the issue within a period of three months from the date of receipt of this Order and also direct the appellant to co-ordinate with the adjudicating authority within one month from the receipt of this Order for fixing a date for correlation of the payments received and Service Tax paid by them. The adjudicating authority shall also consider the issue of limitation at the time of deciding the Show Cause Notice.

6. Accordingly, the miscellaneous application and the appeal both stand disposed of on the above terms.

(Dictated and pronounced in the open court)

Sd/-
**(K. ANPAZHAKAN)**
MEMBER (TECHNICAL)

Sd/-
**(ASHOK JINDAL)**
MEMBER (JUDICIAL)

Sdd