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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 76478 of 2018

(Arising out of Order-in-Appeal No.61/DGP-ST/2017 dated 15/01/2018 passed by Commissioner of CGST & Central Excise (Appeal), Siliguri-WB)

M/s. Majumder Construction
(Vill.; Subirara, P.O. Nityanandapur, Dist. Bankura, West Bengal)

Appellant

VERSUS

Commr. of Goods & Service Tax, Bolpur
(Nanoor Chandidas Road, Sian, Dist. Birbhum, Bolpur, 731204 (W.B))

Respondent

APPEARANCE :
None for the Appellant
Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO.75353/2024

Date of Hearing : 26 February 2024
Date of Decision: 26 February 2024

PER R. MURALIDHAR:

No one has appeared inspite of Notice. During the last occasion, it was pointed out that the Appellant had opted for SVLDR Scheme and has also made the payment towards the amount indicated by the Department under SVLDRS-3 Certificate. The Bench had directed the Office of the AR to get it verified as to whether the Appellant has discharged the amounts specified under SVLDRS-3 and as to whether SVLDRS-4 Certificate was issued by the Department or not.

2. Today the Learned AR draws my attention to the letter dated 29/09/2022 issued by the Assistant Commissioner (Technical), Bolpur Commissionerate, wherein it is stated that the Appellant has made the payment of Rs. 43,102/- on 11/03/2020 i.e. beyond 30 days from the date of issue of SVLDRS-3 on 29/01/2020. I find that the Department has not issued the SVLDRS-4 Certificate since Rule 7 of SVLDRS Rules, 2019 very

clearly states that the amount arrived at under SVLDRS-3 should be paid within 30 days from the date of its issue.

3. I find that there is no provision to extend this time limit and no powers have been conferred to any authority to do so. Therefore, I hold that the Appellant is not eligible to get the benefit of SVLDR Scheme.

4. In the interest of justice, the Appeal itself was taken up on merits with the help of the Learned AR.

5. I find that the Appellant was issued Show Cause Notice based on the Income Tax Returns filed by them. By taking into account the TDS deducted by the clients under Form 26AS, Show Cause Notice has been issued to the Appellant. The Appellant has been maintaining that they have undertaken the services falling under "Works Contract Service" wherein they have provided the materials and also provided the services towards construction services. They have also submitted that their major work has been done for their principle contractors, Sen Brothers who have discharged the Service Tax on the entire contract value as per the Work Contract provisions. Therefore, in respect of the value of Rs. 29,75,500/- sub-contract work done by the Appellant by carrying the impression that no Service Tax is required to be paid, the Appellant has not paid the same. Even in respect of the other contracts, the nature of work is that of works contract only. In the Orders passed, the lower authorities have confirmed the demand of Rs. 2,15,509/- along with interest and penalties. In order to close the litigation, the Appellant had opted for amnesty scheme under SVLDR. They had pre-deposited Rs. 21,551/- while preferring the Appeal before the Commissioner (Appeals) and this Tribunal. They filed their SVLDRS-1 on 18/12/2019 showing their balance tax liabilities as Rs. 43,102/-. After due process, the Department has issued SVLDRS-3 Certificate asking them to pay Rs. 43,101.70/-. This Certificate was issued on 29/01/2020. Therefore, they were required to remit the balance 43101.70/- latest by 28/2/2020.

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However they completed the payment on 11/03/2020 only with a delay of about 12/13 days beyond the permitted time limit of 30 days.

6. From the Show Cause Notice, it is seen that the quantification of demand has been made without considering the fact that the Appellant is providing the Works Contract Service. The Service Tax has been demanded @ 10% of the consideration received by them. Admittedly, the evidence provided by the Appellant shows that they were carrying Works Contract Service only. Therefore, we remand the matter to the Adjudicating Authority with the following directions:-

(i) The demand should be quantified by taking the Service Tax rate as per the Composition rate applicable for Works Contract, during the period under dispute.

(ii) The Appellant should be granted opportunity to present all their documentary evidence towards their submission along with details of payments made by them.

(iii) The Pre-deposit amounts paid and the amount paid in terms of SVLDRS-3 Certificate should be taken as part of the Service Tax payment against the quantified demand.

(iv) In respect of the balance quantified demand, if any, the Appellant should be directed to pay the same.

(v) For all the payments done, the interest is to be paid by the Appellant as per the applicable provisions.

7. In view of the peculiar facts of the present case, I set aside the penalties imposed under Section 77 & 78 of the Finance Act, 1994. The Fine imposed under Rule 7(C) of the Service Tax Rules, 1994 is upheld and is required to be paid by the Appellant.

8. The Appeal is disposed of thus.

(Dictated and pronounced in the open court.)

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

Pooja