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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 48 of 2012

(Arising out of Order-in-Appeal No.133/Bol/2011 dated 20.10.2011 passed by the Commissioner of Central Excise (Appeals-IV), Kolkata, 180, Shantipally, Rajdanga Main Road, 6th Floor, Kolkata – 700 107)

M/s. P.K. Construction **: Appellant**
5A/6, Sukanta Pally (West),
Dhandabagh, Durgapur – 713 203

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Sian, Bolpur, Birbhum,
West Bengal – 731 204

APPEARANCE:

None for the Appellant

Shri B.K. Singh, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 75411 / 2024

DATE OF HEARING / DECISION:04.03.2024

Order : [Per Shri K. Anpazhakan]

The present appeal has been filed against the Order-in-Appeal No.133/Bol/2011 dated 20.10.2011 passed by the Commissioner of Central Excise (Appeals-IV), Kolkata wherein the Ld. Commissioner (Appeals) has upheld the demand of Rs.2,53,207/- towards the Service Tax and interest for delay in payment of Service Tax for the periods 2005-06, 2006-07 and 2008-09. The Ld. Commissioner (Appeals) also upheld the penalty equal to the Service Tax confirmed, under Section 78 of the Finance Act, 1994 and the penalty of Rs.5,000/- imposed under Section 77(1) of the Finance Act, 1994.

2. Brief facts of the case are that the appellant has been providing services to M/s. Durgapur Steel Plant (hereinafter referred to as 'DSP'), but they were not paying proper Service Tax. Accordingly, proceedings were initiated, demanding Service Tax totally amount to Rs.6,05,795/- from the appellant for the periods 2004-05, 2005-06, 2006-07 and 2008-09.

2.1 On adjudication, the ld. adjudicating authority confirmed the demand of Service Tax along with interest and imposed penalties under Sections 76, 77 and 78 of the Finance Act, 1994.

2.2 On appeal, the Ld. Commissioner (Appeals) reduced the Service Tax liability to Rs.2,53,207/- along with interest. He set aside the penalty imposed under Section 76 of the Act, but upheld the penalty under Sections 77(1) and 78 of the Act. Aggrieved against the said confirmation of demand, the appellant has filed this appeal.

3. None appeared for the appellant. As the issue pertains to the year 2012, in the interests of justice, it is decided to take up the appeal for final disposal with the assistance of the Ld. Authorized Representative appearing on behalf of the Revenue.

4. The Ld. Commissioner (Appeals), in the impugned order, has arrived at the net Service Tax payable for the years 2005-06, 2006-07 and 2008-09 as Rs.2,53,207/-, as under: -

> *"8. For the FY 2006-07 and FY 2008-09 the appellant is in agreement with the demand amount. It is seen that during FY 2006-07 the appellant has paid service tax of Rs. 3,14,662/- as against payable amount of Rs. 3,25,805/- and during the FY 2008-*

> *09 the appellant has paid an amount of Rs. 2,37,798/- as against payable amount of Rs. 3,21,285/-. From the foregoing discussions it is thus evident that the appellant is now liable to pay service tax for an amount of Rs. 2,53,207/- along with interest for the period under dispute. Out of this amount the assesse has claimed that they have paid an amount of Rs. 80,220/- and Rs. 25,576/- as arrear service tax for the FY 2006-07 and FY 2007-08 respectively. But no document evidencing such payment was produced. Again, since there was no demand for the period 2007-08 the arrear service tax paid in respect of the said FY is not taken into consideration for calculating the total liability of payment of service tax by the appellant. Accordingly, the appellant is now required to pay an amount of Rs. 2,53,207/- towards service tax and interest for delay in payment of service tax for the periods 2005-06, 2006-07 & 2008-09 respectively. The order of the lower authority is modified accordingly."*

5. From the submissions made by the appellant, we find that the appellant has paid the Service Tax for various financial years, which have not been considered by the ld. adjudicating authority and the ld. appellate authority. The relevant portion of the submission of the appellant in the appeal memorandum is reproduced below: --

> *"2. ….. the Ld. Commissioner(Appeal) should have quantified the amount of service tax payable by the appellant (i.e differential amount) for the FY 2008-09 after considering the amount which has been already paid by the Appellant. In the instant case Ld. Commissioner erred in considering Rs. 237798/- as the amount of service tax paid by the appellant for the FY 2008-09- whereas the*

> *appellant had paid the amount of Rs.350861/- as record) service tax and Ed. Cess for the said year which is on record.*
>
> *3. …. The Ld. Commissioner(Appeal) rightly held that service tax payable by the appellant for the FY 2008-09 is Rs.321285/-. The Appellant had already paid Rs, 350861/- as service tax & Ed. Cess in the FY 2008-09 which is Rs.29576/- more than the amount held as payable.*
>
> *4. …. the Ld. Commissioner(Appeal) erred in upholding that the appellant is required to pay differential service tax for the FY 2008-09.*
>
> *5. …. the differential amount of service tax aggregating Rs. 253207/- held by the Ld. Commissioner(Appeal) as payable for the period 2005-06, 2006-07 & 2008-09 is not correct inasmuch as no differential amount of service tax for the FY 2008-09 is payable by the appellant."*

5.1 From the above, it is evident that the appellant's claim of payment of Service Tax for the Financial Year 2008-09 has not been taken into account while reconciling the net Service Tax payable by the appellant. Accordingly, it is required to remand the matter back to the ld. adjudicating authority to verify the above claim of the appellant and arrive at the actual Service Tax payable by the appellant, if any, for the periods 2004-05, 2005-06, 2006-07 and 2008-09.

6. In view of the above, we set aside the impugned order passed by the Ld. Commissioner (Appeals) and remand the matter back to the adjudicating authority for the purpose of reconciling the actual payment

made by the appellant and to arrive at the liability, if any, for the periods 2004-05, 2005-06, 2006-07 and 2008-09.

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

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

Sd/-	Sd/-
(K. ANPAZHAKAN)	**(ASHOK JINDAL)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Sdd