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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75943 of 2015

(Arising out of Order-in-Original No. 04/Commr/ST-I/Kol/2015-16 dated 31.07.2015 passed by the Commissioner of Service Tax-I, Kendriya Utpad Shulk Bhawan, 3rd Floor, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Forum Projects (P) Limited **: Appellant**
4/1, Red Cross Place, 3rd Floor,
Kolkata – 700 001

VERSUS

Commissioner of Service Tax-I **: Respondent**
Kendriya Utpad Shulk Bhawan,
180, Shantipally, Rajdanga Main Road, Kolkata – 700 107

APPEARANCE:

Shri Tarun Chatterjee, Advocate for the Appellant
Assisted by Shri Raju Mondal, Advocate for the Appellant

Shri K. Chaudhuri, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO. 75630 / 2024

DATE OF HEARING / DECISION: 02.04.2024

Order : [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein the demand of Service Tax has been confirmed against the appellant on reverse charge basis for the period from 2010-11 to 2011-12.

2. The facts of the case are that the appellant is engaged in the activity of construction of residential flats. For providing the said service, the appellant availed the services of foreign engineers for drawing designs for the construction of said residential complexes. The said service of availment of architects from abroad is liable to be taxed under reverse charge

mechanism and the appellant is liable to pay Service Tax thereon. Accordingly, proceedings were initiated against the appellant on the basis of CERA Audit and a Show Cause Notice was issued to the appellant on 07.01.2014 by invoking the extended period of limitation.

3. The matter was adjudicated and demand of Service Tax was confirmed against the appellant vide impugned order; penalties were also imposed. Aggrieved from the said order, the appellant is before us.

4. The Ld. Counsel appearing on behalf of the appellant submits that this is a case of revenue neutrality as whatever Service Tax is required to be paid by the appellant under reverse charge mechanism, the appellant is entitled to take CENVAT Credit thereof on the same day. Therefore, he submitted that it being a revenue neutral situation, the extended period of limitation is not invokable, as held by the Hon'ble Apex Court in the case of *M/s. Jet Airways (India) Ltd. v. Commissioner [2017 (7) G.S.T.L. J35 (S.C.)]* and prays that the impugned order be set aside.

5. On the other hand, the Ld. Authorized Representative appearing on behalf of the Revenue reiterated the findings in the impugned order.

6. Heard the parties and considered their submissions.

7. We find that in this case, although the appellant is liable to pay Service Tax under reverse charge mechanism, the appellant is also entitled to avail CENVAT Credit of the same, immediately. In these circumstances, we find that it is a revenue neutral

situation. The Show Cause Notice in the present case has been issued to the appellant by invoking the extended period of limitation. However, we note that the extended period of limitation is not invokable in a case of revenue neutrality as held by the Hon'ble Supreme Court in the case of *M/s. Jet Airways (India) Ltd. (supra)*. Hence, following the decision of the Hon'ble Supreme Court in the case of *M/s. Jet Airways (India) Ltd. (supra*), we hold that being a revenue neutral situation, in the facts and circumstances of the case, the extended period of limitation is not invokable. Accordingly, we hold that the whole of the demand is barred by limitation and the demand of Service Tax is not sustainable against the appellant.

8. As the demand of Service Tax has been held to be unsustainable, no penalty is imposable on the appellant.

9. In view of this, we set aside the impugned order and allow the appeal with consequential relief, if any.

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

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(RAJEEV TANDON)
MEMBER (TECHNICAL)

Sdd