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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76435 of 2014

(Arising out of Order-in-Appeal No.52/GHY/CE(A)/GHY/2014 dated 23.07.2014 passed by Commissioner(Appeals), Customs and Central Excise, Guwahati)

M/s. K.K.Builders & Engineers Pvt. Ltd. **: Appellant**
S.R.C.B Road, Fancy Bazar,
Guwahati-781 001.

VERSUS

Commissioner of Central Excise(Appeals), Guwahati. **: Respondent**
Customs House, Nilamoni Phukan Path, Christian Basti,
Guwahati-781 005.

APPEARANCE:

S.K.Goyal, Advocate for the Appellant

Shri S.Mukhopadhyay, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 75795/ 2024

DATE OF HEARING :24.04.2024

DAT EOF DECISION:24.04.2024

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order demanding Service Tax under the category of commercial and industrial construction services. The disputed period is from 01.10.2005 to 31.03.2008 and Show Cause Notice has been issued to the appellant on 18.04.2011 by invoking extended period of limitation to demand service tax and to impose penalty on the appellant. The appellant contested the issue and submitted that they have provided the services between December, 2001 to May, 2005 and investigation was started in June, 2010. In that circumstance, the demand is barred by limitation. On merits, the contention of the appellant is that their activity falls under the category of 'Works Contract Service' as they have provided the service along with material. Therefore, the proceedings against the appellant were required to be set aside but vide adjudication order, demand of service was confirmed along with interest and penalties were also imposed. The said order was challenged before the Ld. Commissioner (Appeal) who upheld the adjudication order. Therefore the appellant is in appeal before us.

2. Heard the parties.

3. We find that in this case the facts are not in dispute, that the appellant was providing the service along with the materials. In that circumstances, in terms of the decision of the Hon'ble Apex Court in the case of L & T citation *2015 (39) STR 913 (S.C)*, the merit classification of the activity is 'Works Contract Service' as observed by the Hon'ble Apex Court 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."*

4. In view of this we hold that the merit classification of the service provided by the appellant is 'Works Contract Service' and no demand has been raised against the appellant in the 'Works Contract Service'. In thatcircumstances, on merits, the demand is not sustainable.

5. Moreover, the demand has been raised against the appellant by invoking extended period of limitation which is also not sustainable.

6. 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)

(K. ANPAZHAKAN)	**(ASHOK JINDAL)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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