

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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75247 of 2015

(Arising out of Order-in-Appeal No. 02/ST/B-II/2014 dated 08.12.2014 passed by the Commissioner (Appeals), Central Excise, Customs and Service Tax, C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha)

M/s. Shree Balaji Engicons (P) Limited

: Appellant

A.T./P.O.: Belpahar,
District: Jharsuguda, Odisha

VERSUS

**Commissioner, Central Excise, Customs and
Service Tax,**

: Respondent

Bhubaneswar-II Commissionerate,
C.R. Building, Rajaswa Vihar, Bhubaneswar – 751 007, Odisha

APPEARANCE:

Shri Debayan Dutta, Advocate 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. 76005 / 2024

DATE OF HEARING: 10.05.2024

DATE OF DECISION: 04.06.2024

ORDER:[PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Appeal No. 02/ST/B-II/2014 dated 08.12.2014 passed by the Commissioner (Appeals), Bhubaneswar wherein the Ld. Commissioner (Appeals) has upheld the demands confirmed in the Order-in-Original No.IV(09)20/S.Tax/2010/AC/SBP-I/02/2012 dated 25.01.2012.

2. The facts of the case are that the appellant have executed two work orders dated 31.07.2007 and 24.03.2007 for their client viz. M/s. Vedanta Aluminium Limited, Jharsuguda. The above said work orders executed by the appellant are for: (i) piping work under railway line and (ii) boulder pitching for construction of road. The appellant was of the view that the services rendered in respect of railways and construction of road are exempted from levy of Service Tax and accordingly, had not paid Service Tax on the said activities.

3. A Show Cause Notice dated 20.10.2010 was thereafter issued to the appellant demanding Service Tax of Rs.3,87,212/- (including cess) for the period 2007-08, proposing to classify the services rendered by the appellant under the category of 'commercial or industrial construction service'.

3.1. The Notice was adjudicated by the Ld. Assistant Commissioner of Central Excise & Customs, Sambalpur, Orissa who vide Order-in-Original dated 25.01.2012 confirmed the demand of Service Tax along with interest and imposed penalty equal to the quantum of Service Tax confirmed in the order.

3.2. On appeal, the Ld. Commissioner (Appeals) vide the impugned order has also upheld the demands confirmed in the Order-in-Original.

4. Aggrieved against the impugned order, the appellant has filed this appeal.

5. The appellant submits that the work order dated 31.07.2007 was meant for piping work under railway lines and the work order dated 24.03.2007 was meant for boulder pitching for construction of road; that the

above referred work orders are rightly classifiable under 'works contract service' as they involve transfer of property in goods. It is submitted that the client has registered the aforesaid contracts under the Odisha Value Added Tax Act, 2004 and paid Works Contract Tax to the Government.

5.1. Further, it is contended by the appellant that the services in respect of piping work under railway lines and construction of roads are exempt from levy of Service Tax; the Notice has not explained as to why these services are liable to Service Tax. In this regard, they relied on the decision of the Hon'ble Supreme Court in the case of *Commissioner of Central Excise v. Brindavan Beverages (P) Ltd.* [2007 (213) E.L.T. 487 (S.C.)] and *Commissioner of Central Excise v. Gas Authority of India Ltd.* [2008 (232) E.L.T. 7 (S.C.)] wherein it has been categorically held that a Show Cause Notice must state the grounds for raising the demands.

5.2. The appellant also submits that the Notice issued on 20.10.2010 for the period 2007-08 is barred by limitation as there is no suppression of fact with intention to evade tax existing in this case. Accordingly, the appellant has argued that the demand is liable to be set aside on the ground of limitation also.

6. The Ld. Authorized Representative for the Revenue reiterated the findings in the impugned order.

7. Heard both sides and perused the appeal records.

8. We observe that the appellant has executed two work orders to their client namely, M/s. Vedanta Aluminium Ltd., Jharsuguda. The work order dated 31.07.2007 is meant for piping work in respect of railway lines. A perusal of the said work order shows that the works have been rendered to the railways and during the relevant period, services rendered to the railways were exempted from Service Tax.

8.1. It is also observed that the other work order dated 24.03.2007 is actually meant for construction of road and there was no liability to discharge Service Tax in respect of the said services rendered towards construction of road.

8.2. Further, from the Work Orders, we observe that the services rendered are rightly classifiable under the category of 'works contract service' as they involve transfer of property in goods. It is observed that the client has registered the aforesaid contracts under the Odisha Value Added Tax Act, 2004 and paid Works Contract Tax to the Government, but, in the Notice, no demand has been made under 'Work Contract Service'. Thus, we observe that the demand confirmed under 'Commercial or Industrial Construction Service' is not sustainable and hence we set aside the same.

9. Regarding, the demand of service tax by invoking extended period of limitation, we observe that there is no suppression with intention to evade payment of Service Tax established in the present case. Hence, the Show Cause Notice demanding Service Tax for the period 2007-08 issued on 20.10.2010 is barred by limitation. Accordingly, we hold that the demands confirmed in the impugned

order are liable to be set aside on the ground of limitation also.

10. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the appellant.

(Order pronounced in the open court on **04.06.2024**)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd