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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.70436 of 2013

(Arising out of Order-in-Original No.42/Commr/ST/Kol/2012-13 dated 27.12.2012 passed by Commissioner, Service Tax, Kolkata.)

M/s. Astha
(210 & 1895, R.B. Connector, Kolkata-700107.)

...Appellant

VERSUS

Commissioner of Service Tax, Kolkata

.....Respondent

(Kendriya Utpad Shulk Bhawan, (3rd Floor), 180, Shantipally, Rajdanga Main Road, Kolkta-700107.)

APPEARANCE

Shri S.P. Siddhanta, Consultant for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 76160/2024

DATE OF HEARING : 19.06.2024
DATE OF DECISION : 19.06.2024

Per : R. MURALIDHAR :

The Appellant is a provider of 'Construction of Residential Complex Service' for the period 2007-08 to 2009-10. A Show Cause Notice was issued on 29.07.2011 demanding the Service Tax not paid/short paid. During the investigation, the Revenue officials found that the Appellant was collecting the Service Tax from their clients, but not remitting to the Revenue. During the course of investigation, a demand of Rs.39,52,658/- was raised on the Appellant. In the course of investigation and adjudication, the Appellant paid Rs.40.00 Lakhs, which was appropriated in the Order-in-Original. The Adjudicating authority confirmed the demand of Service Tax of Rs.1,39,52,652/- along with interest and penalty and also appropriated Rs.40.00 Lakhs. Being aggrieved, the Appellant is before the Tribunal.

2. The Ld.Consultant submits that some Annexures to Show Cause Notice were not supplied because of which they could not properly defend their case. He further submits that in respect of 'Construction Service' both goods as well as services are supplied by the Appellant. Therefore they would be eligible for the abatement of 67%/70% during the period under dispute. He submits that no abatement was considered while quantifying the demand. He also submits that in some cases part of the goods were supplied by the clients, but even in such cases it has been held in the case of **Bhayana Builders Pvt.Ltd. vs. Commissioner of C.Ex., New Delhi [2015 (37) S.T.R. 525 (Tri.-Del.)] as affirmed by Hon'ble Supreme Court in the case of Commissioner of Service Tax vs. Bhayana Builders (P) Ltd. [2018 (10) G.S.T.L. 118 (SC)]**, that the abatement would be required to be given to the assessee. He submits that the quantification itself is erroneous and the same is required to be properly quantified.

3. The Ld.AR submits that since the Appellant was not filing their Returns properly and was not paying the Service Tax on a timely basis, detailed investigation had to be taken up and only after such a detailed verification, the Revenue could bring to light that Service Tax of Rs.1,39,52,658/- was not paid by the Appellant. Only in view of the detailed investigation taken up, the Appellant has paid Rs.40.00 Lakhs.

4. Heard both sides and perused the appeal papers and other documents placed before us.

5. We find force in the argument of the Appellant that when both goods and services are involved in providing the service, the Appellant would be eligible for abatement of 67%/70% as applicable during the period under consideration. Appellant pleads that the same was not granted to them while quantifying the demand in the Show Cause Notice. However, in the absence of the Annexures to Show Cause Notice in the Appeal papers filed before us, we are not in a position to

come to a proper conclusion in this regard. We direct the Adjudicating authority to supply all the Annexures to the Appellants. After this, the Appellant should go through the annexures and file a clear statement as to the years in which the abatements were not considered while quantifying the demand. Since the abatement percentage also varies from year to year and also the conditions for abatement was different year to year, these issues should be considered by the Adjudicating authority while re-quantifying the amount. The Appellant has paid Rs.40.00 Lakhs which has been appropriated, the same would continue to remain with the Revenue till the re-quantification is done and the matter is decided on merits.

6. Needless to say that after re-quantification, the Appellant should be given an opportunity to make their submissions as to whether they are required to pay this amount or not. Based on the documentary evidence and other submissions placed by the Appellant, the Adjudicating authority should pass a considered decision after following the principles of natural justice.

7. Since the issue pertains to the year 2013, the Adjudicating authority is directed to complete the entire process within 4(four) months from the date of receipt of this order.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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