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

Service Tax Appeal No. 435 of 2011

(Arising out of the Order-in-Original No. 54/Commr./ST/Bol/11 dated 12.07.2011 passed by Commissioner of CGST & Central Excise, Bolpur.)

M/s R. S. Construction & Company,
Sanjib Sarani, Block-A, Durgapur-713201.

...Appellant (s)

VERSUS

Commissioner of CGST & Central Excise, Bolpur,
Nanoor Chandidas, Road, Sian Bolpur, Pin-731204.

. ...**Respondent(s)**

APPERANCE :
Shri Pulak Saha, Chartered Accountant for the Appellant
Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...76182/2024

DATE OF HEARING : 07.06.2024
DATE OF DECISION : 07.06.2024

PER K. ANPAZHAKAN :

M/s. R.S. Construction & Co.(The Appellant) are engaged in providing 'Management, Maintenance or Repair' Service to its various customers. The Appellant obtained Service Tax registration under 'Maintenance & Repair Service' with the jurisdictional Service Tax and paid service tax to the tune of Rs.59,36,800/- under 'Maintenance & Repair Service'. In addition to the 'Maintenance & Repair Service', the Appellant also undertook various jobs namely, material handling and secondary transportation at site, security, fabrication, dismantling, fabrication, erection, assistance in commissioning, painting, testing, labour supply, etc. All these jobs were undertaken by the Appellant mostly under a written work order and a small portion under verbal contract. Based on the belief that the other services rendered by them are not liable to service tax, the Appellant did not disclose such income in the corresponding service tax returns and also did not discharge service tax.

2. During the course of audit by the department, the verification of the ledger accounts of the Appellant revealed that they have short paid service tax to the tune of Rs.85,53,302/- on the amount received for alleged taxable service provided under the category "Management, Maintenance or Repair Service". Accordingly a Show Cause Notice bearing C. No. V(15)90/ADJ/CE/ BOL/10/1831 dated 15.07.2010 was issued by the Commissioner, Central Excise, Bolpur Commissionerate, demanding service tax of Rs.85,53,302/- under proviso to Section 73(1) of the Finance Act, 1994, along with interest and penalty. The Notice was adjudicated by Commissioner vide Order-in-Original No. 54/COMMR/ST/BOL/11 dated 12.07.2011, wherein the entire demand proposed in the impugned Show Cause Notice has been confirmed along with interest and penalty. Aggrieved against the impugned order, the appellant has filed this appeal.

3. The appellant submits that a perusal of the work orders would reveal that the works carried out by them were under various categories other than Management, Maintenance or Repair Service. However, the impugned order has confirmed the entire demand of service tax under the category of ' Management, Maintenance or Repair Service'. In the Show Cause Notice also there is no demand other than Management, Maintenance or Repair Service'. They have paid service tax of Rs. 59,36,800/- payable for Management, Maintenance or Repair Service. Accordingly, they contended that the entire demand of service tax confirmed in the impugned order under the category of Management, Maintenance or Repair Service is legally not tenable.

3.1. The Appellant submits that they have furnished the details of all agreements and the nature of service rendered by them along with their reply to the SCN. However, the adjudicating authority has not examined the work orders and mechanically demanded entire service tax under the category of ' Management, Maintenance or Repair Service.

3.2. The Appellant further submits that in 2009, audit was conducted for the Financial Years 2005-06 to 2008-09. The audit officers have verified all the work orders. They have not suppressed any information from the audit officers. However, the SCN dated 13.07.2010 was issued to them demanding service tax of Rs.85,53,302/- under the category of Management, Maintenance or Repair Service. They have been paying service tax regularly under the category of Management, Maintenance or Repair Service and filing returns. .As they have not suppressed any information from the department, the demand of service tax confirmed by invoking the extended period of limitation is not sustainable. Accordingly, they prayed for setting aside the impugned order.

4. The Ld. A.R. reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We observe that the Appellant has been rendering service under the category of 'Management, Maintenance or Repair Service and paid Service Tax to the tune of Rs.59,36,800/- . In addition to the above, the impugned order has confirmed further service tax of Rs.85,53,302/- under the category of 'Management, Maintenance or Repair Service. However, we observe that there is no evidence available on record to substantiate the allegation the Appellant has rendered all the services under the category of 'Management, Maintenance or Repair Service.

6.1. A perusal of the work orders based on which the entire demand was confirmed by the Ld. Commissioner, reveal that the jobs rendered by the appellant were of the following nature:

(a) Fabrication & Erection

(b) Design, engineering & modification

(c) Testing & Commissioning

(d) Site Fabrication

(e) Material Handling at site, secondary transportation within site premises, security, dismantling, painting, etc.

(f) Dismantling and overhauling, insulation and cladding

(g) Supply of manpower

(h) Crane hiring

However, the impugned order confirmed the entire demand of service tax under the category of ' Management, Maintenance or Repair Service', which is legally not sustainable.

6.2. Regarding the demand of service tax by invoking extended period of limitation, we observe that the Appellant have submitted the details of all agreements and the nature of service rendered by them along with their reply to the SCN. However, the adjudicating authority has not examined the work orders and mechanically demanded entire service tax under the category of ' Management, Maintenance or Repair Service. We also observe that during the course of audit in 2009, the audit officers have verified all the work orders for the Financial Years 2005-06 to 2008-09. Thus, we observe that the Appellant have not suppressed any information from the audit officers. Hence, the demand of service tax confirmed in the impugned order by invoking the extended period of limitation is not sustainable and hence we set aside the same.

6.3. Regarding the demand of Service Tax, if any, for the normal period of limitation, over and above the Service Tax of Rs.59,36,800/- already paid by the appellant, we observe that the ld. adjudicating authority needs to examine the work orders which are now available with the appellant. Accordingly, for the purpose of arriving at the Service Tax liability, if any, for the normal period of limitation, the matter is remanded back to the adjudicating authority. The adjudicating authority should give an opportunity to the appellant and examine the work orders and arrive at the liability of Service Tax, if any, for the normal period of limitation. The appellant is liable to pay interest for the Service Tax, if any, arrived at by the adjudicating authority. However, no penalty will be imposable on the appellant as there is no suppression with intent to evade payment of tax established in this case.

7. In view of the above, we set aside the impugned order and remand the matter back to the adjudicating authority to examine the work orders and arrive at the Service Tax liability, if any, for the normal period of limitation.

(Dictated and pronounced in the open Court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Tushar Kr.