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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 152 of 2011

(Arising out of Order-in-Original No. 33/Commr/ST/Kol/2010-11 dated 03.01.2011 (issued on 07.02.2011) passed by the Commissioner of Service Tax, Kendriya Utpad Shulk Bhawan, 3rd Floor, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

Commissioner of Service Tax **: Appellant**
Kendriya Utpad Shulk Bhawan,
3rd Floor, 180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

VERSUS

M/s. Lovelock & Lewes **: Respondent**
Plot No. Y-14, Sector-V, Salt Lake Electronics Complex,
Kolkata – 700 091

AND

Service Tax Appeal No. 155 of 2011

(Arising out of Order-in-Original No. 33/Commr/ST/Kol/2010-11 dated 03.01.2011 (issued on 07.02.2011) passed by the Commissioner of Service Tax, Kendriya Utpad Shulk Bhawan, 3rd Floor, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

M/s. Lovelock & Lewes **: Appellant**
Plot No. Y-14, Sector-V, Salt Lake Electronics Complex,
Kolkata – 700 091

VERSUS

Commissioner of Service Tax **: Respondent**
Kendriya Utpad Shulk Bhawan,
3rd Floor, 180, Shantipally, Rajdanga Main Road,
Kolkata – 700 107

APPEARANCE:

None for the Assessee

Shri S.S. Chattopadhyay, Authorized Representative for the Revenue

CORAM:

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

FINAL ORDER NOs. 76601-76602 / 2024

DATE OF HEARING / DECISION: 07.08.2024

ORDER: [PER SHRI ASHOK JINDAL]

Heard the Ld. Authorized Representative appearing on behalf of the Revenue.

2. None appeared on behalf of the assessee despite issue of notice of hearing.

3. Against the impugned order, both sides are in appeal.

4. The facts of the case are that the appellant undertook the work of audit on behalf of M/s. Price Waterhouse Bangalore during the period from March 2004 to September 2005.

4.1. The Revenue was of the view that as the audit done by the assessee falls under the category of 'chartered accountant service', therefore they are liable to pay Service Tax.

4.2. The contention of the assessee is that they are the sub-contractor of M/s. Price Waterhouse Bangalore and therefore, prior to 23.08.2007, they are not liable to pay Service Tax as a sub-contractor.

5. The matter was adjudicated by the ld. adjudicating authority, who dropped the demand for the period prior to 23.08.2007 vide the impugned order by considering the assessee as a sub-contractor of M/s. Price Waterhouse Bangalore. Against the said observation, the Revenue is before us. For the impugned demand confirmed against the assessee, the assessee is in appeal.

6. We observe that prior to 23.08.2007, there were divergent views by way of various judicial pronouncements on the liability of a sub-contractor to pay Service Tax and thereafter, vide Circular dated 23.08.2007, it was clarified that a sub-contractor is liable to pay Service Tax. The appellant had contended that the principal contractor had already paid the Service Tax on the gross value and hence, as a sub-contractor, they were not liable to pay Service Tax. Therefore, we find that the ld. adjudicating authority has rightly dropped the demand for the period prior to 23.08.2007 in the impugned order. In view of this, we do not find any merit in the appeal filed by the Revenue and accordingly, the same is dismissed.

7. With regard to the appeal filed by the assessee, we observe that in some cases, the principal contractor had not paid the Service Tax and accordingly, the ld. adjudicating authority has confirmed the demand amounting to Rs.79,21,684/- in the impugned order alleging that the liability falls on the sub-contractor to pay Service Tax. However, it is observed that prior to 23.08.2007, the liability of payment of service tax by the sub-contractor itself was in doubt and accordingly, we hold that even if the main contractor has not paid Service Tax, the service tax liability cannot be fastened on the sub-contractor for the period prior to 23.08.2007 in the facts and circumstances of the case.

7.1. In view of this, we set aside the impugned order *qua* demanding Service Tax from the assessee. Accordingly, the appeal filed by the assessee is allowed.

8. In the result, the appeals are disposed of in the above manner.

(Dictated and pronounced in the open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd