IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75561 of 2015

(Arising out of Order-in-Appeal No.18/GHY/CE(A)/GHY/2015 dated 23.02.2015 passed by Commissioner (Appeals) of Central Excise & Service Tax, Guwahati)

M/s Nabam Tullon
Nirjuli Short Cut, Nirjuli, Dist.-Papumpumare, Arunachal Pradesh-791109

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Guwahati
Customs House,N.P.Path, Christian Basti, Guwahati-781005, Assam

Respondent

APPERANCE :

Shri Devraj Sahu, Advocate for the Appellant
Shri S.Chakraborty, Authorized Representative for the Respondent

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

FINAL ORDER NO.77085/2024

DATE OF HEARING : 20 .09.2024
DATE OF DECISION : 20 .09.2024

Per R.Muralidhar :

The appellant has been providing the services of border fencing in the Indo Bangladesh Border as per the contract by NBCC on the ground that this will amount to the provision of "Works Contract Service".

2.1 The show-cause notice was issued on 02.01.2012 for the period 01.02.2010 to 31.04.2011 for extending period of limitation.

2.2 After due process, the adjudicating authority confirmed the demand.

2.3 On appeal, the ld.Commissioner (Appeals) dismissed their appeal.

2.4 Being aggrieved, the appellant is before us.

3. The ld.Counsel appearing on behalf of the appellant, submits that the activity undertaken by the appellant under the category of "Erection

and Commissioning" only and the Revenue has been an error in considering the activity as "Works Contract Activity" and he cites the case law wherein the Tribunal consistently held that the erection activity in respect of border fencing is not liable for service tax payment. He therefore, prays that the appeal may be allowed on merit.

3.1 He further submits that the show-cause notice issued on 02.01.2012 by invoking extended period of limitation is required to be set aside and the confirmation of demand be dropped on account of time bar also. The appellant has provided the NBCC working under the Ministry of Home Affairs, therefore, no service tax has been charged on the appellant from NBCC on the reasonable belief that the service tax is required to be paid. Various decisions of the Tribunal on identical issue to say that the appellant is not required to pay service tax on this activity. Therefore, the appellant cannot be fastened with the confirmation of demand for the extended period. He further submits that during the period being under consideration as per Section 73 of the Finance Act, 1994 as it existed then, if the demand for the extended period is held to be erroneous, even balance demand towards normal period cannot be sustained. Therefore, he prays that the appeal may be allowed.

4. The ld.A.R. for the Revenue, reiterates the findings of the lower authorities. He submits that in this case, there is a supply of materials by the firm for Fencing and other related materials. Therefore, he submits that the services are rightly classifiable under "Works Contract Service". He justifies the impugned order and prays that the present appeal may be dismissed.

5. We have gone through the appeal papers.

6. We find that in the present case, the appellant has supplied materials and also undertaken the activities of connected services towards border fencing. Therefore, we find no error on the part of the Revenue to claim that the said services would attract service tax under the category of "Works Contract Service".

7. Further, we find that this issue was litigated before the Tribunal on earlier several occasions, wherein the Department issued the show-cause notices under the category of "Erection and Commissioning Services". In all these cases, the Tribunal has been consistently passing orders by allowing the appeal filed by the assessee. Therefore, this would give the cause to the appellant to entertain the reasonable belief that they are not required to pay any Service Tax. We do not find that the Revenue has brought it any evidence to that effect that the appellant has indulged in any suppression. Therefore, we set aside the impugned order on the ground of time bar.

8. While extended period demand is not legally sustainable, we find that the Section 73 (2A) was amended by way of Finance Bill in 2013 to the effect that if the show-cause notice is issued for the larger period and it is held that the larger period demand is not sustainable, then the Department can recover the duty in respect of the normal period. This was the view was claried by the DOR vide DOF No.334/3/2013-TRU dated 28.02.2013.

9. Since the period involved in this case is prior to the amendment, we hold that the entire confirmed demand is legally not sustainable on account of time bar.

10. In view of the above observations, we allow the appeal on account of time bar with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

(R.Muralidhar)
Member (Judicial)

(Rajeev Tandon)
Member (Technical)

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