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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 76369 of 2018

(Arising out of Order-in-Appeal No.86/DGP-ST/2018 dated 12.02.2018 passed by Commissioner of Goods & Service Tax, Siliguri)

M/s. Modi Engineering Enterprise **: Appellant**
Sukantapally, Amrai, Dhandabag Gram, P.O.-Sripalli, Durgapur-713 203.

VERSUS

The Commissioner of Appeals, Goods & Service tax, Siliguri **: Respondent**
C.R.Building, Hakimpara, Haren Mukherjee Road, Siliguri-734001.

APPEARANCE:

Shri T.K.Dutta, Advocate for the Appellant

Shri Prasenjit Das, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRIASHOK JINDAL, MEMBER (JUDICIAL)

FINAL ORDER NO. 77256 / 2024

DATE OF HEARING :06.11.2024

DATE OF DECISION: 07.11.2024

Order

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant was registered under the category of construction service other than residential complex, including commercial/industrial building or civil structures. It was on the basis of comparison between ST3 Returns and their balance sheet, profit & loss account and Form 26 AS it was alleged that appellant has short paid the Service Tax of Rs. 1,74,098/- during the period 2009-10 to 2013-14. Therefore, a Show Cause Notice was issued to the appellant on

14.10.2014 to demand Service Tax from the appellant.

4. The Adjudicating Authority held that during the period 2010-11 to 2013-14, the appellant has paid excess Service Tax and allowed the abatement in terms of notification No. 01/2006 –St dt. 01.03.2006 but did not adjusted the excess amount of Service Tax paid by the appellant and confirmed the demand as proposed in the Show Cause Notice.

5. The said order was challenged before the Ld. Commissioner (Appeal) who held that as appellant did not get themselves registered under the category of works contract service therefore, they are not entitled for abatement. Accordingly, the impugned demand has been confirmed.

6. Aggrieved from the said order the appellant is before me.

7. Today when the matter was called it is submitted by the Ld. Consultant that the appellant has opted for SVLDRS scheme which was denied to them. Therefore, this appeal.

8. It is his submission that the appellant has provided service alongwith material and it is evident from the records that material purchased was used in providing service by the appellant and the demand has been raised on the basis of the Form 26AS which includes the refund of security amount to the appellant on which no Service Tax is payable.

9. In that circumstances, impugned order is to be set aside. Moreover whatever amount of excess Service Tax was paid by the appellant during the period 2011-12 to 2013-14, the same is required to

be adjusted for the previous demand i.e. 2009-10 to 2010-11.

10. On the other hand Ld. Authorized Representative supported the impugned order.

11. Heard the parties. Considered the submissions.

12. I find that in this case the claim of the appellant is that they were providing works contract services and demand has been raised on the basis of difference between ST3 return and Form 26AS provided by the appellant. It is the contention of the appellant that Form 26 AS include the security amount refunded to the appellant by the service recipient on which no Service Tax is payable by the appellant. The said argument is convincible and required to be dealt by the Adjudicating Authority.

13. Moreover, it is the contention of the appellant that they have provided service along with the material which has been admitted by the Adjudicating Authority in the adjudication order and found that they have paid excess Service Tax which is required to be adjusted against the short payment of Service Tax for a previous period made by the appellant.

14. In that circumstances, I set aside the impugned order and remand matter back to the Adjudicating Authority for readjudicate the matter considering the excess payment made by the appellant in subsequent period is required to be adjusted against the short payment for the earlier period. Moreover, whatever amount of security refund received and shown in the Form 26AS, no Service Tax is payable by the appellant, thereafter to pass an appropriate order in accordance with law.

16. In these terms appeal is disposed off by way of demand.

(Pronounced in the open court on _07.11.2024)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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