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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75327 of 2015

(Arising out of Order-in-Original No. 11/Commr/ST/GHY/2014-15 dated 25.11.2014 (amended from '06/Commr/ST/GHY/14-15 dated 25.11.2014' vide Corrigendum dated 12.01.2015) passed by the Commissioner of Central Excise and Service Tax, Guwahati, Sethi Trust Building, G.S. Road, Bhangagarh, Guwahati – 781 005)

M/s. P. Das & Co. **: Appellant**
Gopal Road, Panbazar,
Guwahati – 781 001 (Assam)

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Guwahati, Sethi Trust Building, G.S. Road, Bhangagarh,
Guwahati – 781 005 (Assam)

APPEARANCE:

Shri Devaraj Sahu, Advocate for the Appellant

Shri Prasenjit Das, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 77575 / 2024

DATE OF HEARING / DECISION: 13.11.2024

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order for the demand confirmed under the category of 'works contract service' for the period from October 2008 to March 2013 by invoking the extended period of limitation. In this case, the Show Cause Notice was issued to the appellant on 22.04.2014, by invocation of the extended period of limitation, for the period from October 2008 to March 2013.

2. The facts of the case are that the appellant was registered under the category of 'works contract service' and filing their S.T.-3 Returns regularly. They were engaged in the works contract services of M/s. Oil India Limited and other Government agencies for laying long distance / short distance pipelines for M/s. Oil India Ltd. as well as other engineering-cum-civil construction project contracts under EPC mode for other Government agencies.

2.1. The Revenue alleges that the appellant had provided various taxable services to their Government clients but failed to discharge their Service Tax liability on the ground that the appellant has not included the cost of material received free of cost from the service recipient for the purpose of discharging its Service Tax liability under the optional Works Contract (Composition Scheme for Payment of Service Tax Rules), 2007.

2.2. Accordingly, a demand of Rs.86,49,331/- was confirmed by the ld. adjudicating authority against the appellant vide the impugned order, out of which an amount of Rs.67,13,566/- was paid by the appellant and the same has also been appropriated. Therefore, the demand confirmed by the ld. adjudicating authority is Rs.19,35,765/- and the demand dropped is Rs.55,06,331/-. The Revenue has demanded Service Tax at the rate of 10% or 12% on the taxable value of services provided whereas the appellant had discharged Service Tax on receipt basis during the material period by paying at the rate of 4% or 4.8% under the Composition Scheme.

3. Against the said order, the appellant is before us.

4. The appellant has raised various issued during the course of arguments. They have agreed to pay the demand of Service Tax within the normal period of limitation.

4.1. As the whole activity was known to the Department and the appellant was registered, paying Service Tax on the said activity and also filing S.T.-3 Returns regularly, therefore, the Ld. Counsel appearing on behalf of the appellant has prayed that the demand confirmed by invoking the extended period of limitation against the appellant be dropped.

4.2. It is also prayed that no penalty be imposed on the appellant as there was no suppression of facts on the part of the appellant.

5. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned order.

6. Heard the parties and perused the records.

7. We find that in this case, it is a fact that the appellant has been filing their S.T.-3 Returns regularly and the said activity undertaken by the appellant i.e., provision of works contract services and payment of Service Tax under the Composition Scheme on 'receipt basis', was also known to the Department. In these circumstances, we hold that the extended period of limitation is not invokable. Accordingly, the demand pertaining to the extended period of limitation is set aside.

8. As it is not a case of suppression of facts by the appellant, therefore, we hold that no penalty is imposable on the appellant.

9. In view of the above, we pass the following order: -

(i) Demand of Service Tax within the normal period is payable by the appellant, along with interest.

(ii) Demand of Service Tax pertaining to the extended period of limitation is set aside.

(iii) No penalty is imposable on the appellant.

10. In these terms, the appeal is disposed of.

(Operative part of the order was pronounced in open court)

Sd/-

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd