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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No.75901 of 2015

(Arising out of Order-in-Appeal No.44/JSR/2015 dated 25.06.2015 passed by Commissioner (Appeals) of Central Excise & Service Tax, Ranchi)

M/s United Engineering Company
(2/2 Krishna Gangotri Apartment, Kadma, Jamshedpur-831005)

Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Ranchi
(Room No.605, 6th Floor, Mahabir Tower, Main Road, Ranchi-834001)

Respondent

APPERANCE :

None for the Appellant
Shri P.Das, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.R.MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77677/2024

DATE OF HEARING : 27 NOVEMBER 2024
DATE OF DECISION : 27 NOVEMBER 2024

Per R.Muralidhar :

In spite of notice, no one is appeared on behalf of the appellant. It is seen from the file that on several occasions, the appellant has failed to appear. It is also observed that the hearing notices have been returned back by the postal authorities, which shows that the appellant is not interested to pursue their appeal. Since the present appeal pertains to the year 2015, the appeal itself is taken up for disposal with the help of the ld.A.R. for the Revenue.

2. It is seen from the appeal papers that the appellant was providing erection, commissioning and installation services and they have not paid the service tax of Rs.2,41,762/- during the period August, 2006 to

April 2007. A show-cause notice was issued and after due process, the adjudicating authority confirmed the demand.

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

2.2 Aggrieved from the said order, the appellant is before the Tribunal.

3. The appellant submits that they have rendered their services to the main contractor, M/s EP (India) Limited, who has discharged the Service Tax liability. He submits that since the main contractor has paid the Service Tax, the appellant herein being a sub-contractor, is not required to pay Service Tax. The appellant further submits that the Board vide its Circular No.96/7/2007-ST dated 23.08.2007, has clarified that even if the main contractor is paying Service Tax, still sub-contractor is required to pay the Service Tax. In their case, the services were rendered between August 2006 to April 2007 before issue of this Circular by the Board. Therefore, the clarification given by the Board, will not be applicable for the appellant. Accordingly, they pray that their appeal may be allowed since the main contractor has paid the service tax.

4. On going through the factual matrix and the statutory provisions, we find that the issue is no more res integra. The Larger Bench of the Tribunal in the case of *Commissioner of Service Tax, New Delhi Vs. Melange Developers Private Limited reported in 2020 (33) GSTL 116 (Tri.-LB)*, has held that even if the Service Tax is paid by the main contractor, still the sub-contractor is required to pay the service tax. Therefore, on merit, the appeal filed by the appellant fails.

5. However, we find that the show-cause notice has been issued on 25.02.2011 for the Service Tax payable during the period August 2006 to April 2007 by invoking extended period provisions. The Larger Bench in the case of Melange Developers Private Limited (supra), has held that in view of the different interpretation during the period under consideration, the demand for the extended period cannot be legally sustained. Accordingly, respectfully following the ratio laid down by the Larger Bench of this Tribunal, we set aside the confirmed demand on the sole ground of limitation.

6. The appeal filed by the appellant stands allowed.

(Dictated and pronounced in the open court)

(R.Muralidhar)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

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