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

REGIONAL BENCH – COURT NO. 2

Service Tax Appeal No. 75441 of 2015

(Arising out of Order-in-Appeal No. 956/Pat/S.Tax/Appeal/2015 dated 06.02.2015/09.02.2015 passed by the Commissioner (Appeals), Customs, Central Excise & Service Tax, 2nd Floor, Central Revenue Building, Birchand Patel Path, Patna – 800 001)

M/s. R.S. Construction **: Appellant**
Ashok Nagar Pokharia,
Begusarai – 851 101

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
Patna Commissionerate

APPEARANCE:

Shri Hemanta Kumar Das, Advocate for the Appellant

Shri Debapriya Sue, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77873 / 2024

DATE OF HEARING / DECISION: 17.12.2024

ORDER: [PER SHRI R. MURALIDHAR]

The facts of the case are that the appellant has been providing maintenance and repair service (inclusive of materials to be used in such maintenance and repair services) to M/s. Indian Oil Corporation Limited (IOCL), Barauni.

1.1. A Show Cause Notice was issued on 12.09.2013 inter alia demanding Service Tax for the period from 2008-09 to 2012-13. The appellant worked out the quantification of the Service Tax payable as Rs.8,20,042/- which has been discharged by them as per the procedure detailed under the VCES scheme. This is not being disputed by both the sides.

1.2. The ld. Adjudicating authority, after due process, confirmed the demand of Rs.3,31,934/- being the differential duty between the demand of Rs.11,51,976/- raised by the Revenue and Rs.8,20,042/- paid by the appellant under the VCES scheme.

2. Being aggrieved, the appellant is before the Tribunal.

3. The Ld. Advocate appearing on behalf of the appellant submits that the appellant is running a proprietary firm and the maintenance and repair services are in the nature of works contract services requiring the appellant to supply goods as well as provide services towards such repairs in terms of Notification No. 30/2012-S.T. dated 20.06.2012 effective from 1st July, 2012, they are required to pay only 50% of the Service Tax and the balance 50% is required to be paid by the receiver of the service viz. M/s. IOCL in the instant case, which is a public limited company. He contends that this fact was not considered by the lower authorities because of which the demand has been confirmed against the appellant.

3.1. He also admits that out of the confirmed demand of Rs.3,31,934/-, 50% of the same is required to be paid by the appellant and undertakes to pay the same so as to close the litigation.

4. The Ld. Authorized Representative of the Revenue submits that the appellant has not adduced proper evidence to the effect that M/s. IOCL has discharged the Service Tax on the balance 50% of the services rendered by the appellant. He also contends that no specifics were brought in by the appellant to the effect that the maintenance and repair services

rendered by them would also include supply of goods. Based on these submissions, he prays that the present appeal may be dismissed.

5. Heard both sides and perused the appeal papers and the documentary evidence placed before us.

6. We find that the issue is in a short compass. The appellant has opted for the VCES scheme and discharged Rs.8,20,042/- towards Service Tax payment out of the total demand of Rs,11,51,976/- They are disputing only the confirmed differential demand of Rs.3,31,934/-. It is also an admitted position that the appellant is running a proprietary firm and, in terms of Notification No. 30/2012-S.T., when the service is provided along with supply of goods, they would be required to discharge Service Tax only on 50% of the consideration received. Under this belief, the appellant have not paid the entire amount of demand under the VCES scheme.

6.1. Now, after the discussions, during the course of hearing, the appellant admits that 50% of Rs.3,31,934/- is still payable by them even if the benefit of Notification No. 30/2012-S.T. is accorded. They have agreed to pay the same.

7. We find from the Order-in-Original dated 14.08.2014 that the ld. adjudicating authority, under paragraph 3.3, has given a finding that:

"3.3 Therefore, under the provision of Rule 5(1) quoted above, the cost of materials being expenditure as consideration to the taxable service of electrical repair and maintenance service, are includable in the taxable value of the noticee for the purpose of payment of service tax."

8. Thus, from the above, it is seen that the ld. adjudicating authority himself has taken the view that the expenditure towards cost of materials is required to be taken as part of the consideration of taxable value of electrical repair and maintenance service and hence includable in the taxable value of the notice for the purpose of payment of Service Tax. This shows that the service is in the nature of works contract service. Thus, we extend the benefit of Notification No. 30/2012-S.T. and hold that the appellant is required to pay 50% of Rs.3,31,934/-.

8.1. They are also required to pay interest on this amount in terms of Section 75 of the Finance Act, 1994.

9. Considering the factual matrix of the case, we waive the penalties imposed on the appellant under Sections 77 and 78 of the Finance Act, 1994.

10. The appeal stands disposed of thus.

(Dictated and pronounced in the open court)

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd