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

REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No. 76365 of 2016**

(Arising out of Order-in-Original No. 92/COMMR/DGP/15-16 dated 26.02.2016 passed by the Commissioner of Customs, Central Excise & Service Tax Commissionerate, Durgapur, Satyajit Ray Sarani, City Centre, Durgapur – 713 216)

**Commissioner of Central Excise and Service Tax : Appellant**
Satyajit Ray Sarani, City Centre,
Durgapur – 713 216

**VERSUS**

**M/s. Electronic House : Respondent**
Plot No. 5165, Durgapur Station Road, District: Burdwan,
Durgapur – 713 201

**<u>APPEARANCE</u>:**

Shri Prasenjit Das, Authorized Representative for the Appellant-Revenue

None for the Respondent

**<u>CORAM</u>:**

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

**FINAL ORDER NO. 75148 / 2025**

DATE OF HEARING / DECISION: 22.01.2025

**ORDER: [PER SHRI ASHOK JINDAL]**

The Revenue is in appeal against the impugned order.

2. The facts of the case are that the respondent is registered with the Service Tax Department for providing services namely, erection, commissioning and installation, construction services in respect of commercial or industrial buildings and civil structures and transportation of goods by road. It is alleged that the respondent has violated the provisions of the Service Tax Rules, 1994 and the Point of Taxation Rules, 2011 inasmuch as they have not filed the half-yearly return for the periods 2012-13 and 2013-14 and not paid / short paid Service Tax to the tune of Rs.2,07,88,184/- (including cess).

2.1. Consequently, a Show Cause Notice dated 10.10.2014 was issued to the respondent, to demand Service Tax.

2.2. The ld. adjudicating authority examined the work orders and found that the work orders were exclusively for supply of bought-out items like electrical equipment, etc., to their clients. Therefore, since it is a trading activity and exempt from payment of Service Tax, the said amount has been deducted from the gross value. Further, on the basis of the work orders, he allowed 67% abatement on the gross value of the work orders in terms of Notification No. 01/2006-S.T. dated 01.03.2006 for the period 2009-10 to 2013-14. The ld. adjudicating authority also found that entry of Rs.59,51,404.49/- as 'Service Tax Payable' and Rs.27,16,552.15/- as 'Service Tax Receivable' in the balance sheet for the year 2012-13 did not appear to be in consonance with the recorded gross turnover of Rs.1,55,36,847/- and held that the inclusion of the said figures of Rs.59,51,404.49/- and Rs.27,16,552.15/- in the balance sheet for the year 2012-13 is irrational and irrelevant and as such felt it proper to ignore the same. On the basis of such analysis, the ld. adjudicating authority confirmed only the demand of Rs.24,99,279/-, along with interest and penalties were also imposed.

3. Aggrieved from the said order, the Revenue is in appeal on the ground that the ld. adjudicating authority should have examined the amount against supply / sale of goods which does not constitute part of taxable services; the order has been passed only on the basis of balance sheets, profit and loss account and work orders supplied by the respondent to the ld. adjudicating authority. Therefore, it is their prayer

that the impugned order qua dropping of the demand is to be set aside.

4. Heard the Ld. Authorized Representative of the Revenue.

5. None appeared on behalf of the respondent.

6. Considering the fact that the appeal itself can be disposed of at this stage, we have taken up the appeal for final disposal.

7. We find that the ld. adjudicating authority has examined the issue in detail on the basis of the documents supplied by the respondent during the course of adjudication and observed as under: -

> *"5.1: I also find in the allegation part of the show cause notice (Annexure-A) that they were having Gross Value for Rs. 8,15,71,782/-during the Financial year 2009-10 Rs.4,32,46,896/- for the year 2010-11 and Rs.3,15,18,176/- for the year 2011-12 as per their Audited Balance Sheet. I further noticed that as per the audited Balance Sheet for the year 2012-13, the Gross Receipt was recorded as Rs.1,55,36,847/-. But since they did not file any ST-3 Returns for the Financial year 2012-13, it could not be compared with the value of ST-3 Return for the year 2012-13 for assessing the service tax liability. But during the aforesaid years pertaining to 2009-10 to 2011-12, they did not deposit service tax amount correctly in accordance with their Gross receipt shown in their Balance Sheet whereby it resulted in the allegation of short payment of service tax to the tune of Rs.2,07,88,184 (As per Annexure-A of SCN) which was challenged by the said noticee in their defence reply dated 19.02.2016.*
>
> *5.2: In course of verification of the case records, it has come to my notice that in the defence reply dated 19.02.2016, they mainly relied upon their Year- wise Balance Sheet, ST-3 Return, Work Orders executed, Invoice issued Deposit Challan showing payment of service tax etc. The said assessee have contended therein that during the year 2009-10, out of the alleged Gross Receipt of Rs.8,15,71,782/-, the*

*amount of value suppressed was shown as Rs.7,02,43,155/-(As per Annexure-A of SCN) compared to the value of relevant ST-3 Return for Rs.1,13,28,627/- and the jobs executed during the year (2009- 10) consists of the following:*

> *a) Rs.2,69,62,276/- on Civil Construction and the abated value after 67% abatement, comes to Rs.88,97,551/-, as the work orders were claimed to have been inclusive of the cost of materials.*
>
> *b) Rs.1,02,50,832/- for Erection Commissioning & Installation Service.*
>
> *c) Rs.31,34,029/- on Retention Value on which service tax was discharged on the total value hence, not taxable twice.*

*Therefore, the Service Tax was claimed to be payable by them on the net taxable value of Rs.1,91,48,383/- (Rs.1,02,50,832/-+ Rs.88,97,551/-) during the year 2009-10, was Rs.19,72,284/ excluding the Retention Value of Rs.31,34,029/-on production of valid evidence on this account on the part of the said noticee.*

*5.3: Similarly during the year 2010-11, against the Gross Receipt of Rs.4,32,46,896/-, the amount of value suppressed was shown as Rs.2,29,77,883/- (As per Annexure-A of SCN) compared to the value of relevant ST-3 Return for Rs.2,02,69,013/- and the jobs executed during the year (2010- 11( includes the following*

> *a) Rs. 20,00,000/-involves Civil Construction Work and the abated value after 67% abatement, comes to Rs. 6,60,000/, as the work orders were claimed to have been inclusive of the cost of materials;*
>
> *b) Rs. 1,21,27,860/- relates to Erection, Commissioning & Installation Service (ETC);*
>
> *c) Rs. 57,69,677/- for Retention value for Retention Value on which service tax was discharged on the total value, hence, not taxable twice;*
>
> *d) Rs.2,33,49,359/- for Supply Receipt/Trading work which was exempted from the payment of service tax.*

*Therefore, they contended that Service Tax was payable on the net taxable value of Rs.1,27,87,860/-(Rs.1,21,27,860/-+ Rs. 6,60,000/-) during the year was Rs. 13,17,150/- excluding the Retention value of Rs. 57,69,677 & Supply Work for Rs. 2,33,49,359/.*

*5.4: Again, their contention of the defense reply has also came to my notice that during the year 2011-12, their Gross Receipt being Rs.3,15,18,176/-, the amount of value suppressed was Rs.2,17,34,520/- (As per Annexure-A of SCN) compared to the value of relevant ST-3 Return for Rs.97,83,656/- against and the jobs for:*

> *(a) Rs. 1,40,09,558/- towards Civil Construction Service and the abated value after 67% abatement, comes to Rs. 46,23,154/-, as the work orders were inclusive of the cost of materials;*
>
> *(b) Rs.85,10,063/- for Erection Commissioning service (ETC);*
>
> *(c) Rs. 89,98,555/- for Supply Receipt which was exempted from the payment of service tax.*

*Thus, the Service Tax on the net taxable value of Rs.1,31,33,217.19 (Rs.85,10,063/-+ Rs.46,23,154/-) during the year was Rs. 13,52,721/- excluding Value of Supply work of Rs.89,98,555/-.*

*5.5: In the same manner, they have pleaded that during the year 2012-13, we could not file ST-3 Return and could not deposit Service tax liability. Again, the amount of Rs. 59,51,404.49 was shown as 'Service Tax payable' and Rs. 27,16,552.15 was shown as 'Service Tax Receivable' and both the said amount were clubbed in the demand amount of the SCN whereas as per the Balance Sheet, their Gross Receipt was Rs.1,55,36,847/- in respect of the following job:*

> *a) Rs. 7,63,871/- against Civil Construction Work without availing/claiming any abatement;*
>
> *b) Rs. 1,06,99,578/-relates to Erection Commissioning service (ETC);*
>
> *c) Rs. 33,410/-on Labour Supply;*

> *d) Rs.40,39,958/- involves Supply Receipt which was exempted from the payment of service tax.*

*Therefore, the Service Tax was payable on the net taxable value of Rs. 1,09,85,095/- (Rs.1,06,99,577.74+ Rs. 33,410.00 +Rs. 2,52,077.63) during the year was Rs.13,57,758/ excluding the Value of Supply work for Rs.40,39,958/-.*

*5.6: 1 find that in support of their contention, they have furnished the Grand Summary wherein they have shown their total net liability of Service tax pertaining to the aforesaid 4 (four) years from 2009-10 to 2012-13 as Rs.59,99,908/- (Rs.19,72,283/- + Rs. 13,17,150/- + Rs.13,52,721/-+ Rs.13,57,754/-) against which they claimed to have already paid/deposited Rs. 44,08,909/- resulting in net short paid amount for Rs.15,90,999/-.*

*5.7: Now the moot point left before me is to decide the unresolved/disputed Issues by examining the following aspects:*

*i) Whether the relevant documents, so submitted by the said noticee, transparently justifies their claim of exemption on Retention Value.*

*ii) Whether out of the total suppressed value, as alleged in the SCN, the value claimed as the Receipt from exclusively Supply of Tax Paid Goods to the clients and as to whether the relevant Work Orders and payment received on this account confirms their claim.*

*iii) Whether the abatement claimed @67% under Notification No. 1/2006 ST dated 01.03.2006 as amended in respect of 'Civil Construction Service' ,are admissible to them.*

*iv) Whether the total deposit of Service Tax claimed to have been made by the said assessee during the material period, as shown in the deposit Challans, was correct.*

*v) Whether the entry made in the Balance Sheet for the year 2012-13 against Rs.59,51,404.49 as 'Service Tax payable' and Rs. 27,16.552.15 was shown as 'Service Tax Receivable' was erroneous without having any relevance of their Work Order* *executed and Gross Receipt during the said year, as recorded in the said Balance Sheet for 2012-13.*

*5.8: Now, I would like to proceed to examine and discuss the aforesaid controversial issues one by one.*

*i) Regarding the 'Retention value', I observe from the copies of Work Order issued by the clients and Retention Invoice issued by the said Noticee that a part of Contract value generally @ 10% or sometimes @5% was retained by the clients for presumably guarantee/quality of the work, whereas Service Tax was paid against the whole value (100%) thereby the said Retention value cannot be taxed further and shall be deducted from the taxable value.*

*ii) Regarding the Supply of Tax paid goods, I have thoroughly examined the relevant Work Orders in respect M/s Durgapur Projects Ltd. (DPL.), M/s Shristi Infrastructure, M/s Sova Group, M/s Philips Carbon Black Ltd. (PCBL) and find that those Work orders are exclusively for supply of Electrical Equipments etc. bought out from the market and supplied to the said clients Since the said Supply work being trading are activity exempted from the payment of service tax, it does attract any service tax liability thereon. I thus hold the view that the said value cannot be the part/constituent of taxable service.*

*iii) Regarding the abatement claimed @ 67% on the gross value and service tax payable on 33% on the Gross contract value in respect of Commercial & Industrial Construction Service defined under Section-65(105) of Finance Act, 1994, I have gone through the relevant Work orders and find that the Work Orders issued by M/s ALSTOM/AREVA, M/s ABB, M/s Sova Group, M/s DVC contains that Gross Contract value was inclusive of the cost of all civil constructional materials including consumables. Therefore, as per the Notification No. 1/2006 ST as amended, in respect 'Civil, Commercial and Industrial Construction Service' specified under Section-65(105) of Finance Act, 1994, the abatement @ 67% on the gross value was admissible,* *provided they have not availed any Cenvat Credit in respect of Inputs and Capital goods used in providing the said taxable service. Therefore, I do not find any reasons to make departure from the said statutory directives and find sufficient force in the submission of the said noticee in their contention of defense reply.*

*iv) Regarding the payment/deposition of service tax for the material period, I have scrutinized the year-wise deposit Challans and find that they have deposited Rs. 18,57,633/- for the year 2009-10 Rs. 6,35,287/-for the year 2010-11 Rs. 10,07,714/- for the year 2011-12; Rs. NIL for the year 2012-13 totaling to Rs. 35,00,634/- pertaining to the period from 2009-10 to 2012-13. Hence, their claim of depositing Rs. 44,08,909/-in excess of Rs.35,00,634/- cannot be considered and entertained in the absence of any source documents and proper correlation thereof.*

*v) Regarding the entry made in the Balance Sheet for the year 2012-13 against Rs.59,51,404.49 as 'Service Tax payable and Rs.27,16,552.15 was shown as 'Service Tax Receivable', as raised in the Annexure to SCN I have made a serious thought on the matter and curiously examined their audited Balance sheet & Work orders executed during 2012-13 and find that during the said year their recorded Gross Receipt was Rs.1,55,36,847/- as per the Balance Sheet which includes Rs. 7,63,871/- towards Civil Construction Work; Rs.1,06,99,578/- towards Erection Commissioning service; Rs.33,410/-on Labour Supply & Rs.40,39,958/- involves Supply Receipt. Therefore, the said entry of Rs.59,51,404.49 as 'Service Tax payable and Rs. 27,16,552,15 as 'Service Tax Receivable' do not appear to be in consonance with their recorded gross turnover of Rs.1,55,36,847/- in the Balance Sheet for the whole year 2012-13, rather, have reasons to believe the same amounting to be an 'irrelevant entry.*

*vi) Moreover, 1 feel more astonished as to how both the 'tax receivable' and 'tax payable' be clubbed together in the demand of service*

> *tax, as raised in the show cause notice. Assuming the same as their service tax liability for the entire four years for 2009-10 to 2012-13, yet in that case also, the total liability against the contract executed during the material period beginning from 2009-10 to 2012-13 as per the SCN framed relying upon their audited balance sheet, does support this allegation. Most importantly, while examining their case records and submission, I have seriously followed the principle of accounting in considering the Aggregate Contract Value for the demand period from 2009-10 to 2012-13 vis-a-vis all the four audited Balance Sheets along with all Work orders executed for the material period of four years & all payments deposited as per Challans for the year 2009-10 to 2012-13 leaving no stone unturned to examine their total transaction and find no merit, rationality & logical foundation for Inclusion of the said figure of Rs.59,51,404.49 as 'Service Tax payable and Rs.27,16,552.15 as 'Service Tax Receivable', in the demand notice and thus, I feel it proper to ignore the same."*

7.1. We find that the ld. adjudicating authority has examined the issue in detail on the basis of the available records and passed the impugned order. Hence, dropping of the demand cannot be disputed.

8. In these circumstances, we do not find any merit in the Revenue's appeal and accordingly, the same is dismissed.

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

Sd/-
**(ASHOK JINDAL)**
MEMBER (JUDICIAL)

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

Sdd