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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75854 of 2014

WITH

Service Tax Cross Objection No. 75139 of 2015

(Arising out of Order-in-Original No. 56/Comm/ST/KOL/2013-14 dated 14.02.2014 passed by the Commissioner of Service Tax, Kendriya Utpad Shulk Bhawan, 3rd Floor, 180, Shantipally, Rajdanga Main Road, Kolkata – 700 107)

Commissioner of Service Tax **: Appellant**
Kendriya Utpad Shulk Bhawan, 3rd Floor,
180, Shantipally, Rajdanga Main Road, Kolkata – 700 107

VERSUS

M/s. Prestar Infrastructure India Limited **: Respondent**
P-23, Transport Depot Road,
Kolkata – 700 088

APPEARANCE:

Shri P.K. Ghosh, Authorized Representative for the Appellant-Revenue

None for the Respondent

CORAM:

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

FINAL ORDER NO. 75497 / 2025

DATE OF HEARING / DECISION: 13.02.2025

ORDER: [PER SHRI ASHOK JINDAL]

The Revenue is in appeal against the impugned order. The respondent has also filed a cross objection to the appeal filed by the Revenue.

2. The facts of the case are as under: -

(i) M/s. Prestar Infrastructure India Ltd. (hereinafter referred to as the "respondent") having their registered premises at P-23, Transport Depot Road, Kolkata 700088 and holding Service Tax registration no. AADCP1888KSD002 was alleged to have suppressed material facts with the intention to evade payment of Service Tax by wilfully contravening the provisions of Sections 67, 68, 69 & 70 of the Finance Act, 1994 read with Rules 4 & 6 of the Service Tax Rules 1994.

(ii) In course of checking of documents, it was revealed that the respondent did not take registration till 21/07/2011 and had not submitted ST-3 Return from 2007-08 to 2010-11 thereby contravening Section 70 of the said Act, though they were supposed to get registered in 2007-08. The scrutiny of records pertaining to 2007-08 to 2011-12 revealed the following: The assessee has paid Rs.3,34,03,528/- for Transport Charges and Delivery Charges & Freight Charges for the period 2007-08 (from October 2007) to 2011-12 for which Service Tax of Rs.6,77,296/- (including both Cess) was payable. However, it is seen from the ST-3 return of the said assessee for the period April to September 2011 and October 2011 to March 2012 that they paid Rs.1,31,072/- (including both Cess) on Rs.12,75,450/- (25% of Rs.51,01,802/-) only Therefore the said assessee is required to pay differential service tax of Rs.5,44,988/- (including both Cess).

(iii) It is alleged that, during the course of audit it was also revealed that the respondent received Commission of Rs.3,45,83,333/-, Supervision Charges of Rs.2,80,50,000/- and Service Charges of Rs.13,24,777/- during the period 2007-08 to 2011-12 from their customers. The above charges are taxable under "Business Auxiliary Service" as defined in Section 65 (105) of the said Act and accordingly the assessee is required to pay Service Tax amounting Rs.69,26,722/-, (including Education Cess and Secondary & Higher Education Cess).

(iv) It was alleged that the respondent had also received Rs.26,24,55,591/- for providing Work Contract Service during the period 2008-09 to 2010-11 (as per their Balance Sheet). The above charges are taxable under 'Works Contract Service' as defined in section 65(105) of the said Act and accordingly the respondent is required to pay Service Tax amounting Rs.2,71,52,818/- (including Education Cess and Secondary & Higher Education Cess). Also, the respondent has allegedly not included 'Business Auxiliary Service' and 'Works Contract Service' in the Registration Certificate.

(v) From the above facts and legal provisions, it appeared to the Revenue that the respondent did not act in the best of interests and suppressed material fact with the intention to evade service tax; The Revenue alleges that if the audit was not conducted, the fact could not have been unearthed and thus extended period under the proviso to Section 73(1) of the said Act is applicable in the instant case.

3. On the basis of above stated allegations and reported contravention of law, a Show Cause Notice dated 18.04.2013 was issued to the respondent, asking them to show cause as to why: -

i) Service Tax amounting to 3,46,24,528/- (including both Cess) payable on "Transport of Goods by Road Service' (GTA), 'Business Auxiliary Service' & 'Works Contract Service' should not be demanded and recovered from them in terms of Section 73(1) of the said Act.

ii) interest as envisaged under section 75 of the said Act should not be paid by them on the amount of Service Tax not paid;

iii) penalty in terms of Section 78 of the Finance Act 1994 should not be imposed for non payment of Service Tax;

iv) penalty in terms of Section 77 of the Finance Act 1994 should not be imposed for failing to register themselves with the Department (for "Business Auxiliary Service" and "Works Contract Service") as provided under Rule 4 of Service Tax Rules 1994 and for non submission of ST-3 returns contravening Section 70 of the said Act for the period 2007-08 to 2010-11.

4. The matter was adjudicated vide the impugned order, wherein the ld. adjudicating authority has ordered as follows: -

"(i) I do hereby confirm the demand of Service Tax of ₹11,17,777/- (Rupees eleven lakh seventeen thousand seven hundred seventy seven) only (including Cess) under Section 73(2) of the Finance Act, 1994 (as amended), remaining amount of ₹3,35,06,751/- is dropped.

(ii) I order to pay interest at appropriate rate, in terms of Sections 75 of the Finance Act, 1994 (as amended) on the confirmed amount.

(iii) I impose penalty of ₹11,17,777/- (Rupees eleven lakh seventeen thousand seven hundred seventy seven) only under Section 78 of the Finance Act, 1994 (as amended). However the noticee is entitled to get the benefit of paying twenty-five-percent of penalty, if the reduced penalty is paid along with determined service tax and appropriate interest within thirty days from the date of communication of this order.

(v) I impose penalty of 10,000/(Rupees ten thousand) only, under section 77(1)(a) for failure to take registration on (i)'Business Auxiliary Services', and (ii) 'Works Contract Services' in due time.

(vi) I impose penalty of ₹. 10,000/- (Rupees ten thousand) only, under section 77(2), for failure to furnish the periodic ST-3 returns on (i)'Business Auxiliary Services', and (ii) 'Works Contract Services"

5. Aggrieved from the said order, the Revenue is before us on the ground that the ld. adjudicating authority has granted the benefit of exemption in terms of Notification No. 17/2005-S.T. dated 07.06.2005 and Notification No. 24/2009-S.T. dated 27.07.2009 without ascertaining as to whether the said service had in fact been provided by the respondent in relation to construction, maintenance and repairs of public road and without examining the original contract between the principal contractors and the authorities concerned.

5.1. The respondent has filed a cross objection submitting that whatever demand has been confirmed against them, the same is to be confirmed cum tax price as the respondent has not recovered any amount over and above the amount received against the services provided by them.

6. Heard the parties.

7. We find that the main ground of the Revenue to deny the benefit of the said Notifications is that the ld. adjudicating authority has not examined the agreements. We have gone through the impugned order. From a perusal of the impugned order, we find that the ld. adjudicating authority has recorded the findings that the respondent has received various amounts from M/s. Uttar Pradesh Rajakiya Nirman Nigam Limited during the period from 2008 to 2011 for construction and maintenance of P.M.G.I. road in Hordoi, from M/s. Hindustan Construction Company Ltd. during the year 2010-11 for construction and maintenance of approach road and land development work in the project of widening of the existing two lanes to four lane including strengthening of existing

two lanes of NH-34 from Km 295+000 to km 398+ in Maldah District, West Bengal and from M/s. PACL India Ltd. for the period 2009-10 for agricultural land levelling work at National Highway and site formation, clearance, excavation, earthmoving and demolition work in relation to construction of road.

7.1. These facts are available on record.

8. Therefore, it cannot be said that the ld. adjudicating authority has not examined the documents before allowing the benefit of the aforesaid Notifications. In these circumstances, we do not find any merit in the appeal filed by the Revenue and therefore, the Revenue's appeal is dismissed.

8.1. With regard to the cross objection filed by the respondent, we find that the respondent has not received any amount over and above the amount received for the services rendered by them. Hence, the same is required to be treated as cum Service Tax price. The penalties also stand reduced to this extent. In these terms, the cross objection is disposed of.

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

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd