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

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No. 70388 of 2013

(Arising out of Order-in-Original No.36/Commr/ST/Kol/2012-13 dated 14/12/2012 passed by Commissioner of Service Tax, Kolkata)

M/s. Delta Construction
(5, Chowdhury Para Road, Belgharia, Kolkata-700056)

Appellant

VERSUS

Commr. of Service Tax, Kolkata
(180, Santipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPEARANCE :

Shri Aditya Dutta, Advocate for the Appellant
Shri S. K. Dikshit, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.76199/2025

Date of Hearing : 8th April 2025
Date of Decision : 8th April 2025

PER R. MURALIDHAR

The appellant has been providing construction services to various entities like SSKM Hospital, Staff Training College and Calcutta High Court etc. as sub-contractor to the main contractor M/s. Macintosh Burn Limited. The Show cause Notice was issued demanding an amount of Rs.80,46,516/- under the classification of "Construction of Residential Complex" and Rs.8,45,436/-under the classification of "Manpower Supply Agency Service". After due process, the demand was confirmed along with interest and penalty. Being aggrieved, the appellant is before the Tribunal.

2. The Learned Advocate appearing on behalf of the appellant submits that they have already paid Rs.63,88,933/- between period 22/06/2010 to 18/03/2011. He submits that they are not contesting the amount already paid by them along with interest. In respect of the

balance amount of Rs. 16,57,583/-, he submits that Rs. 9,37,083/- already stands paid by the main contractor before March 2007. Therefore, the same may also be taken as paid by the appellant. Further, towards the Service Tax amount of Rs. 5,67,867, they take the stand that the service is provided to Government buildings like hospital, high court, etc. As per the Circular No. 80/30/2004 dated 17/09/2004 at Para 13.2, it has been clarified that such services is exempted from payment of Service Tax. Therefore, he prays that no further amount is required to be paid by the appellant.

3. Without prejudice to these submissions, he takes the stand that the Show Cause Notice has been issued for the services provided under Construction of Complex Service, which was exempted from payment of Service Tax till 30.6.2010. Hence, even on this ground, the confirmed demand cannot be legally sustained.

4. In respect of the Manpower supply Agency services, they have already paid Service Tax of Rs. 2,17,541/-. They are not contesting the balance payment of Rs. 6,27,895/- to be made by them.

5. The Learned AR reiterates the findings of the lower authorities and submits that the fact of the Service Tax being paid by the main contractor or by sub-contractor as well as the service has been rendered to government buildings are required to be verified. Therefore, he prays that the matter may be remanded to the Adjudicating Authority.

6. Heard both sides and perused the appeal papers.

7. Coming to “Manpower Supply Agency Services”, the appellants have already paid Rs. 2,17,541/-. They are agreeing to pay balance amount of Rs. 6,27,895/-. We direct them to pay Rs. 6,27,895/- along with interest.

8. In respect of Rs. 2,17,541/- claimed to have been paid, the same may be get verified by the Adjudicating Authority for which the appellant would be required to pay interest, if already not paid.

9. In respect of the "Construction of Residential Complex", Service Tax demand of Rs. 80,46,516/- has been confirmed. We find from the Show Cause Notice at Para 2.7 that the Revenue has alleged that though the amount is towards *Construction* of Residential Complex Service" and "Commercial or Industrial Construction Service". While quantifying the demand under annexure of the Show Cause Notice the entire demand has been made under category of "Construction of Residential Complex". The copy of the Annexure-X of the SCN is reproduced below:-

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ANNEXURE - X

Detailed Service Tax liability on Construction of Residential Complex service in respect of M/s. Delta Construction for the year 2005-06 to 2009-10

Year	Name of Service	Assessable value taken from Colm. 5 of Annexure-U	Rate of tax	Tax payable			Total S.Tax payable	Tax paid			Total S.Tax paid	S.Tax to be paid			
				S.Tax	E.Cess	S.H.E. Cess		S.Tax	E.Cess	S.H.E. Cess		S.Tax to be paid	E.Cess to be paid	S.H.E.Cess to be paid	Total S.Tax to be paid
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
2005-06 (Oct'05 to Mar'06	Construction of residential complex service	15632142	10.20%	1563214	31265	0	1594479	1035625	20713	0	1056338	527589	10552	0	538141
2006-07	Construction of residential complex service	20414742	12.24%	2449769	48995	0	2498764	1993348	39867	0	2033215	456421	9128	0	465549
2007-08	Construction of residential complex	13291658	12.36%	1594999	28878	15950	1639827	1304379	26088	13044	1343511	290620	2790	2906	296316
2008-09	Construction of residential complex	5014628	12.36%	601756	12035	6018	619809	254594	5092	2546	262231	347162	6943	3472	357577
2009-10	Construction of residential complex	16443075	10.30%	1644308	32886	16443	1693637	1644308	32886	16443	1693637	0	0	0	0
Grand Total		70796245		7854046	154060	38411	8046516	6232254	124646	32033	6388932	1621792	29414	6378	1657583

Inspector (SIV)
Service Tax Commissionerate
180, Shantipally
Kolkata - 700 107

Superintendent (SIV)
Service Tax Commissionerate
180, Shantipally
Kolkata - 700 107

10. We find that in terms of Board's Circular No80/30/2004 dated 17/09/2004, which has been considered by various Tribunals and High Courts to hold that no Service Tax is required to be paid till 01/07/2010 on "Construction of Complex Services (Residential)". On this ground itself, we set aside the confirmed demand of Rs. 16,57,583/- in respect of "Construction of Residential Complex".

11. It is being made clear that no refund whatsoever would accrue to the appellant on account of this decision.

12. The appeal stands disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

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