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

REGIONAL BENCH – COURT NO.2

Service Tax Appeal No. 75631 of 2014

(Arising out of Order-In-Original No.52/Comm/ST/KOL/2013-14 dated 31/01/2014 passed by Commissioner of Service Tax, Kolkata)

M/s. Peerless Financial Products Distribution Ltd.
Formerly M/s. Peerless Developers Ltd.
(1 (H-L), Chowringhee Square, 4th Floor, Kolkata-700069)

Appellant

VERSUS

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

Respondent

APPEARANCE :
Mr. Shekhar Vyas, Advocate & Mr. S. Talukdar, Authorized Representative for the Appellant
Mr. P. K. Ghosh, Authorized Representative for the Respondent

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

FINAL ORDER NO.77910/2024

Date of Hearing : 16 December 2024
Date of Decision: : 16 December 2024

PER R. MURALIDHAR:

The appellant is providing various taxable services like Business Auxiliary Service (BAS), Maintenance or Repair Service, Construction of Commercial or Industrial Buildings and Residential Complex, BSS etc. The Show Cause Notice was issued on 16/04/2012 for the period 2006-2011 by invoking the extended period provisions. After due process, the Adjudicating Authority has confirmed the demand of Rs. 83,37,824/- and has appropriated Service Tax of Rs 15,90,329/- and interest of Rs. 6,98,213/-. He has also imposed penalty of Rs.83,37,824/-. Being aggrieved, the appellant is before the Tribunal.

2. The Learned Counsel submits that the confirmed demands are under the various Headings as per the following Table:-

SI No.	Category	Demands
I.	BAS (Business Auxiliary Service)	Rs.36,44,690/-
II.	MMR (Management, Maintenance or Repair Services)	Rs.22,46,150/-
III.	Renting of Immovable Property	Rs. 88,135/-
IV	CICS (Commercial or Industrial Construction Service)	Rs. 13,62,546/-
V.	Construction of Complex Service	Rs. 4,17,074/-
VI.	BAS	Rs. 1,22,107/-
VII.	PLC Services	Rs.3,15,449/-
VIII.	Works Contract Service	Rs.83,987/-

3. In respect of the confirmed demand of Rs. 37,02,376/- [(i) above], he submits that they have paid the Service Tax of Rs.36,44,690/- under the category of 'Business Support Services'. In respect of the balance amount of Rs.57,686/-, he submits that this is not a short payment. In view of the reduced rate of Service Tax, the actual payable amount was only Rs.36,44,690/- not Rs.37,02,376/- as has been confirmed in the impugned order.

4. In respect of the Management, 'Maintenance or Repair Services' (MMR) [(ii) above], while the demand has been confirmed for Rs.22,46,150/. The appellants have already paid Service Tax of Rs. 10,99,922/-. They have documentary evidence that in some cases, the maintenance charges are not payable since the possession has

not been given to the buyers. Therefore, the Learned Counsel contests the quantification.

5. In respect of the 'Renting of Immovable Property', [(iii) above] demand of Rs. 88,135/- has been confirmed. He submits that the service was provided prior to 01.06.2007 when renting of immovable property was not under the Service Tax bracket.

6. In respect of the 'Commercial or Industrial Construction Service' [(iv) above], the demand of Rs. 13,62,546/- has been confirmed. He submits that they have submitted the documentary evidence with regard to the completion of project and Occupancy Certificate issued but the same was not considered properly by the Adjudicating Authority.

7. In respect of Construction of Construction of Complex Service [(v) above], the confirmed demand is for Rs. 4,17,074/-. The appellant submits that as per the Board's Circular, no Service Tax is payable upto 30/06/2010. They have documentary evidence that the complex was completed and OC was issued prior to this date. They have also discharged Service Tax wherever Service Tax is applicable by taking abatement of 75%. Hence, he submits that the demand is required to be set aside.

8. In respect of the confirmed demand of Rs.1,22,107/- under 'Business Auxiliary Service' (BAS) [(vi) above], the appellant submits that they are required to pay only Rs.98,161/- which has been already paid towards the disputed quantification. They have proper documentary as evidence which can be produced before the Adjudicating Authority for waiver of the balance amount.

9. In respect of the confirmed demand of Rs. 3,15,449/- on account of Preferential Location Charges (PLC) recovered from the buyers, he relies on the case law of **Vipul IT Infrasoft Pvt. Ltd. Vs. CST, Noida-(2024) 21 Centax 249 (Tri.-All.)**. Accordingly, he

submits that no Service Tax is required to be paid as PLC charges, as they are already part of the total gross consideration received from the buyers on which Service Tax has already been discharged.

10. In respect of the 'Works Contract Service', the confirmed demand is for Rs. 83,987/-. He submits that the amount has already been paid and has been acknowledging the OIO and has been appropriated at Para 4.11 of the OIO. He submits that they are not contesting this amount.

11. In respect of the entire confirmed demands, the appellant is also contesting the issue on account of time bar. The Learned Counsel submits that Show Cause Notice was issued on 16/04/2012 for the period 2006-2011. He submits that the demand is not sustainable for the extended period, as there was no suppression on their part.

12. The Learned AR reiterates the findings of the lower authorities and submits that verification is required to be taken up in many of the above case. Hence, the matter may be remanded to the Adjudicating Authority.

13. Heard both sides and perused the documentary evidence produced before us.

14. In respect of the (i) above, we hold that the appellant has paid the amount under 'BAS' services whereas the only objection of the Department is that the Service Tax has not been paid under the category of 'Business Support Service. For the balance amount of Rs. 57,686/-, the appellant has been able to explain that this amount is not required to be paid. Therefore, we set aside the demand to the extent of Rs. 37,02,376/- and allow the appeal to this extent.

15. In respect of the Works Contract Service, the appellant has already paid Rs.83,986/- and is not contesting the same and has also

been appropriated in the Order. Therefore, no order is being passed by us.

16. In respect of all other services, the matter stands remanded to the Adjudicating Authority who should go through all the documentary evidence and the case law placed before him and pass a considered decision on merits.

17. The Adjudicating Authority is also directed to go into the arguments of the appellant on account of limitation and pass a considered decision even on this aspect.

18. Since the matter pertains to the period 2006-2011, the Adjudicating Authority is directed to complete the proceedings within four months from the date of receipt of this Order.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-

(K. Anpazhakan)
Member (Technical)

Pooja