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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75469 of 2018

(Arising out of Order-in-Appeal No.23/DGP/2015 dated 03.11.2015 passed by Commissioner of Central Excise, Appeal-II, Kolkata.)

M/s. J.K.Construction & Co.
(3/20, Rana Pratap Road, Durgapur-713204.)

...Appellant

VERSUS

Commr., CGST & CX, Bolpur Commissionerate

.....Respondent

(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)

APPEARANCE

Shri H.K.Pandey, Advocate for the Appellant (s)
Shri S.K.Jha, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)

FINAL ORDER NO. 77182/2025

DATE OF HEARING : 05.08.2025
DATE OF DECISION : 05.08.2025

R. MURALIDHAR :

The Appellant has been providing Construction Service under CICS category and also providing Maintenance and Repair Services to Durgapur Steel Plant. On the ground that the Appellants have not paid requisite Service Tax on these services during the period 2004-05 to 2008-09, a Show Cause Notice came to be issued on 20.10.2009 wherein the extended period provisions were invoked. After due process, the Adjudicating authority has confirmed the demand. On appeal, the Commissioner(Appeals) has dismissed their Appeal. Being aggrieved, the Appellant is before the Tribunal.

2. The Ld.Advocate appearing on behalf of the Appellant mainly takes the ground of limitation in defence of their case. He takes me through to Annexure A of the Show Cause Notice wherein an amount of Service Tax payable for the period 2008-09 has been worked out to Rs.2,71,718/-. In the same Annexure the actual tax paid by the Appellant during this period has been considered. He points out that for the period 2008-09, the Appellant has paid Service Tax of Rs.2,71,091/- which tallies with the demand of Rs.2,71,718/- for the same period. Therefore, he submits that effectively the demand is only for the period upto 2006-2007 for which a Show Cause Notice should have been issued latest by 24th April 2008. In order to justify the delayed issuing of Show Cause Notice, the Revenue has deliberately added the Service Tax payable and paid for the period 2008-09.

3. He further submits that the Show Cause Notice does not give the bifurcation of the demand on account of Construction Service under CICS and in respect of Maintenance and Repair Services. If this bifurcation was properly given in the Show Cause Notice, the Appellant would have put up their defence by showing the details of materials used in respect of these services which would be eligible for abatement in terms of Notification issued towards these services. In view of these submissions, he prays that the Appeal may be allowed.

4. The Ld.AR for the Revenue reiterates the findings of the lower authorities. He draws my attention to the fact that the Appellant has obtained Service Tax Registration on 30.10.2004, but was not paying the Service Tax on CICS services and Maintenance and Repair Servicers properly. They have been accounting for only part of the receipts while making the payment which has resulted in short payment of Service Tax to the extent of Rs.5,06,462/-. He further submits that these facts came to the light only after detailed verification. Therefore, he justifies the invocation of extended period. He prays that the Appeal may be dismissed.

5. Heard both sides and perused the appeal papers and other documents placed before me.

6. I find that prior to 01.07.2012, the Revenue was required to specify the classification under which the demand is being made. In this case, it is seen that the demand has been made purely based on the turnover for the year as has been declared by the Appellant in their Books of Accounts for each of their financial years. This turnover has been taken to arrive at the Service Tax payable. While the allegation is towards CICS Services and Maintenance and Repair Services, I find that in both these cases, abatement has to be considered for the materials used. The Revenue is in error in not quantifying the demand properly under these two headings. This has deprived the Appellant from taking proper defence towards the material used in respect of these services. Revenue is also in error in generalizing the turnover to quantify the demand.

7. I also find force in the Appellant's arguments that there was no need for the Revenue to add the turnover of 2008-09 for quantifying the present demand. It is also seen that no quantification has been done for the year 2007-08. Therefore, effectively the demand is for the period 2004-05 to 2006-07 only. Further I also find that it is not the case of the Department that the Appellant has not taken the Service Tax Registration. The Show Cause Notice also states that the Appellants have filed their ST-3 Returns. Therefore, in terms of instructions given to the officials under CBEC Manual, even in respect of self-assessed Returns, scrutiny of the Returns is required to be taken up by them. The objections raised in 2009 by way of the present Show Cause Notice could have been raised in 2005-06, 2006-07 itself, if proper scrutiny was taken up for the ST Returns filed by the Appellant.

8. The Tribunal in the case of **Accurate Chemicals Industries v. Commr. of C.Ex., NOIDA [2014 (300) ELT 451 (Tri.-Del.)]** affirmed by the Hon'ble High Court of Allahabad has clearly held that once the assessee files the Returns, the Revenue officials are required to undertake the scrutiny and raise the query if any. In this case if there was a short payment or non-payment of Service Tax under these two headings, the queries should have been posed to the Appellant when the ST-3 Return were filed, which has not been done in this case.

9. In view of the foregoing, I hold that the confirmed demand is legally not sustainable both on merits and on account of time bar. I set aside the same and allow the Appeal with consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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