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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 75317 of 2016

(Arising out of Order-in-Original No. 02/COMMR/CE/KOL-II/Adjn/2015-16 dated 04.12.2015 passed by Commissioner of Central Excise, Kolkata-II.)

M/s Betterman Engineers Pvt. Ltd.
(N. H.-6, Chamrail, Liluah, Howrah-711103)

Appellant

VERSUS

Commr. ofCentral Excise, Kolkata-II
(M. S. Building, 15/1, Strand Road, Kolkata-700001)

Respondent

With

Excise Appeal No. 75318 of 2016

(Arising out of Order-in-Original No. 02/COMMR/CE/KOL-II/Adjn/2015-16 dated 04.12.2015 passed by Commissioner of Central Excise, Kolkata-II.)

Sri Dinesh Kumar Jaiswal, Director
M/s Betterman Engineers Pvt. Ltd.
(N. H.-6, Chamrail, Liluah, Howrah-711103)

Appellant

VERSUS

Commr.of Central Excise, Kolkata-II
(M. S. Building, 15/1, Strand Road, Kolkata-700001)

Respondent

APPEARANCE:

Shri N. K. Chowdhury, Advocate for the Appellant
Shri S. Chitkara & Shri D. Sue, Authorized Representativefor the Respondent

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

FINAL ORDER NO.77598-77599/2025

Date of Hearing :24 September 2025
Date of Pronouncement:31.10.2025

ORDER [PER R. MURALIDHAR]

The appellants were engaged in the job work of fabrication of structural steel for various plants – power plant, cement plant, railways, Flyover etc. as per drawing and specification provided by the client. Their main clients are Tata Steel, Larsen & Tubro, Mitsubishi, Jindal, NTPC etc. During the course of their business, M/s. SENBO Engineering Ltd. issued them a Work Order dated 06.04.2009 for fabrication of steel structure required for the construction of flyover/road. The Appellants were fabricating those structures of steel items supplied by the client. On completion of the job, SENBO was taking delivery of the goods with their own cost of transportation. M/s. SENBO and the appellants were aware that the said activity was undertaking of construction of road service, which was outside the purview of the Service Tax and for that reason, a provision as kept in the said Work Order of that Service Tax is not applicable – if applicable the same shall be reimbursed to the appellants by SENBO who was supplying the goods / steel materials, paints etc. against Annexure-II Challan. They intimated the appellants with reference to the said letter dated 30.06.2009 that the appellants were not required to charge any Service Tax in their bills since the project was infrastructure project viz. construction of road, which is specifically excluded from the scope Service Tax liability.

2. The appellants were issued with a Show Cause Notice on 22.07.2014 directing the appellants to show cause as to why Central Excise duty amounting to Rs.95,64,360/- shall not be demanded and

recovered. It was alleged in the said Show Cause Notice that the appellants had manufactured and supplied fabricated steel structures like girders, piers etc., but no duty was paid. The appellants had manufactured the goods in their premises and got the goods inspected by the approved agencies of SENBO Engineering Ltd. Therefore, the appellants are the manufacturer of the goods and liable for payment of duty. After due process, the Adjudicating authority confirmed the demand. Being aggrieved, the appellants have filed the present appeal before the Tribunal.

3. The Ld Counsel, appearing on behalf of the appellant makes the following submissions :

(i) In July, 2009, the department raised the issue of demand of Service Tax vide their letter dated 30.06.2009, but SENBO confirmed the appellants that the appellants were not required to charge any Service Tax. The appellants had received the goods under Annexure-2 Challan from SENBO and also receiving the goods directly from the steel plant on account of SENBO, the appellants did not take any credit and job worked goods were returned to them after job work.

(ii) It is submitted that the officers of the department during the course of audit under EA-2000, on verification of records observed that the undertaking of work by appellants awarded to them by M/s. SENBO is classifiable under Business Auxiliary Service and accordingly requested for payment of Service Tax vide Spot No.2 dated 01.03.2012. Their direction to reverse the Cenvat Credit was complied with.

4. The above instances show that, it is clear that the Dept has all along right from 2009 onwards viewed the activity of the appellant as a service.

5. However, the appellants were issued with the present Show Cause Notice on 22.07.2014 demanding Central Excise duty as a manufacturer. This is a complete U turn by the Dept., so as to fasten the liability on the appellant somehow or the other.

6. The appellants had received the goods under Annexure-2 Challan from SENBO and also receiving the goods directly from the steel plant on account of SENBO, the appellants did not take any credit and job worked goods were returned to them. This shows that the appellants were carrying only job-work amounting to service.

7. The main contractor Senbo is engaged in construction of Roads and Flyovers, for which the appellant has provided the service as sub-contractor, using the materials issued by them. The main contractor is exempted from payment of Service Tax and even the sub-contractor providing the same service to the contractor is also exempted from payment of Service Tax. This is clarified under Circular No.147/16/2011

ST dated 21.10.2011. Only on this basis, no further action was taken by the EA 2000 Audit team in 2012 after visiting the appellant's unit.

8. In view of the above submissions, the Ld advocate submits that the impugned order is required to be set aside on merits.

9. He further takes the plea that the Dept was in the know of the activities of the appellant as is evidenced by their initial query in 2009 and the EA 2000 Audit conducted on February and March 2012. During this time, the Revenue has viewed the activity as Service, but dropped further proceedings after being convinced that the Service Tax was exempted. Therefore, no case of suppression can be alleged on the appellant to issue the SCN demanding Excise Duty after more than 5 years of their initial knowledge. Hence, it is prayed that the appeal may be allowed on account of time bar also.

10. The Ld AR appearing on behalf of the Revenue submits that the activity undertaken by the appellant amounts to undertaking job-work amounting to manufacture, in terms of Section 2 (f) of CEA 1944. Therefore, the appellant was required to clear the goods on payment of Excise Duty, which they failed to do so. Only after due verification of the books of accounts, the contravention came to light. Therefore, he justifies the confirmed demand.

11. Heard both the sides in detail.

12. We find that the appellant has been receiving the basic raw materials from SENBO, who were the main contractor for laying of roads and fly-overs. They have specifically told the appellant that no Service Tax is payable on the activity undertaken by the appellant. We find that the Board Circular No.147/16/2011 dt 21.10.2011, clarifies that when the contract is on Works contract basis, and the same is exempted from payment of Service Tax for the main contractor, similar exemption would be available to the sub-contractor also when he also undertakes the same WCS. In the present case, the Dept. has proceeded right from 2009 onwards with the view the activity undertaken by the appellant is covered under Service and have demanded the Service Tax. After coming to know that they are eligible for Service Tax exemption, no further steps were taken against the appellant.

13. The investigation was taken up much later in September 2013 and SCN was issued in 2014, demanding the Excise Duty on the job-worked goods. The appellants have provided documentary evidence to the effect that they have received the raw materials from the client and sent back the same after completing the job-work under the Challans given by the client. They have followed the proper procedure for such job-work undertaken by them.

14. We find that this shows that there was no suppression on the part of the appellant at any point of time. As a matter of fact, it is the Dept, which has interpreted the activity in two different ways to issue the SCN for the extended period.

15. We also hold that the appellant in view of the Board Clarification would have entertained Bonafide belief that they are only undertaking job-work falling under Business Auxiliary Services, duly exempted from payment of Service Tax.

16. Therefore, we do not see any merits in invoking the suppression clause against the appellant to fasten the demand for the extended period. Accordingly, we set aside the impugned order on account of time-bar.

17. The appeal stands allowed, with consequential relief, if any, as per law.

(Order pronounced in the open court on 31.10.2025.)

Sd/-
(K. Anpazhakan)
Member (Technical)

Sd/-
(R. Muralidhar)
Member (Judicial)

Pooja