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

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.75550 of 2023

(Arising out of Order-in-AppealNo.30/BOL-ST/2023-24S dated25.04.2023 passed by Commissioner(Appeals) ofCGST &Central Excise, Siliguri Appeals Commissionerate, Siliguri.)

M/s. Bhadrish Construction Pvt.Ltd.
(Radhanagar Road, Asansol, Dist.Paschim Bardhaman, Pin-713325, West Bengal.)

...Appellant

VERSUS

Commissioner, CGST & CX, Bolpur

.....Respondent

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

APPEARANCE

Shri S.P.Siddhanta, Consultant for the Appellant (s)
Shri P.Das, Authorized Representative for the Revenue

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

FINAL ORDER NO. 75844/2026

DATE OF HEARING :03.07.2026
DATE OF DECISION :03.07.2026

R. MURALIDHAR :

The Appellant was issued Show Cause Notice demanding Service Tax on 'Supply of Manpower Services' on Reverse Charge basis. The demand was raised for Rs.8,03,073/- on 16.10.2019 by invoking the extended period provisions. After due process the Adjudicating authority confirmed the demand.

2. On appeal, the Commissioner(Appeals) has noted that the demand pertaining to 2014-15 and 2015-16 were already covered by the earlier audit objections and were resolved and accordingly he has set aside the demand pertaining to this period. He has confirmed the Service Tax of Rs.4,49,381/- for the period 2016-17 and 2017-18. Being aggrieved, the Appellant is before the Tribunal.

3. The Ld.Consultant appearing on behalf of the Appellant, submits a copy of the Spot Memo No.1 dated 07.08.2018, wherein it is stated that the services were pertaining to plastering, brickwork, concreting etc. wherein lump-sum amount was involved as consideration. Even the copy of the contract given by the main contractor M/s. Bridge & Roof Co. (I) Ltd. shows that a contract has been granted for undertaking such work. Therefore, he submits that the Revenue is in error in terming this service as 'Supply of Manpower Service' in the Show Cause Notice, when no such service was provided by the Appellant at all. On this ground itself he prays that the Appeal may be allowed on merits.

4. The Ld.Consultant also submits copy of the C.A. Certificate dated 17.04.2021 wherein it is clearly stated that the Bills were raised by the sub-contractor on rate contract basis. In one case where the sub-contractor has raised Bill for 'Supply of Manpower Services', the Appellant company has also paid the requisite Service Tax on Reverse Charge basis. This CA's Certificate was not properly considered by the lower authorities.

5. He further submits that the Appellant is duly registered with the Service Tax Department and is paying Service Tax for the services rendered by them. Therefore, even if it is held for a moment that the Appellant is liable to pay Service Tax on RCM basis, the Service Tax paid would accrue to the Appellant as Cenvat Credit. In such cases, the Appellant would not have any reason to suppress any factual details to evade payment of Service Tax. This is a situation where revenue neutrality arises. On account of revenue neutrality,he submits that the Show Cause Notice issued on 16.10.2019 may be held as time barred.

6. The Ld.AR reiterates the findings of the lower authorities and justifies the confirmed demand.

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

8. A copy of the Spot Memo No.1 dated 07.08.2018 is reproduced below :

NATION TAX MARKET

Government of India
Office of the Assistant Commissioner of Cental Tax, Audit Circle –1,
Durgapur Audit Commissionerate,
Sen Raleigh Road, Kumarpur More, R. K. Mission, Asansol-5 (W. B.)
E-mail – auditcircle1asn@gmail.com

C. No.V(30)62/ST/DGP Audit/Circle-I/Gr-06/Bhadrish/2017/ Dated:- 07.08.2018

To
M/s. Bhadrish Construction Private Limited,
Radhanagar Road, Asansol
Distt.-Paschim Bardhaman,
PIN-713325.

Dear Sir (s),

Sub: Spot Memo No. 1 dated 07.08.2018

On scrutiny of the balance sheet for the year 2016-17, it appears that an amount of Rs.21,99,353/- was paid to the sub-contractors in 2016-17 & Rs.21,83,670.72 was paid in 2015-16.

On further scrutiny of the corresponding bill of Sri Debdas Dey, eg. Bill No.38th RA Bill dated 21.03.2017 and 18th RA bill dated 29.03.2016, describing the nature of work as Plastering Brickwork, concreting, reinforcement, shuttering etc. of 7 storied building at Barnaparichay, the Book Mall Project in 83 college street, Kolkata and depicting the various works done, it appears that Rs.21,76,637/- was paid to Shri Debdas Dey during 2016-17. The services so provided are liable for service tax under works contract service as per the definition of Works Contract Services as defined in Section 65 (105) (zzzza) of the Finance Act, 1994, which is liable for payment of service tax under Reverse Charge Mechanism, as per Notification No. 30/2012-ST dated 20.06.2012.

You are, therefore, requested to pay the service tax amount of Rs.65,981/- (S.Tax-Rs.61582/-, S.B. Cess-Rs.2199/- & K.K.Cess-Rs.2199/-) alongwith appropriate interest and penalty.

You are further requested to provide the details of such services received from your contractors and the balance sheet during the last five years and to pay the applicable Service Tax (and cesses) there on along with appropriate interest and penalty and to intimate the payment particulars to the undersigned for necessary action.

Yours faithfully,

07.08.18

(Shiv Kumar Mukim)
Superintendent
Central Tax: Group-6,
Audit Circle-1, Asansol.

9. The relevant portion of the Show Cause Notice is reproduced below:

services received from the said sub-contractors, again attracted service tax liabilities on them as recipient of such "Supply of Manpower services",(making them liable for payment of 75% of the Service Tax), under Sl. No.8 of Point – II of Notification No.30/2012-Service Tax dated – 20.06.2012 effective from 01.07.2012. The above Notification was further amended vide notification No.7/2015-Service Tax dated – 01.03.2015, making the recipient of Supply of Manpower services for any purpose liable to pay 100% of the Service Tax, with effect from 01.04.2015.

2.6 The said noticee were requested several times (more than 8 times) to submit the details of such services received from their sub-contractors and to pay service tax there-on along with applicable interest and penalty, but those did not yield any result, which was affirmed/communicated by the Assistant Commissioner, CGST, Asansol- I Division, vide letter C.No.V(1)12-Audit/Misc.Corrs/ASN-I/CGST/17 dated – 10.10.2019.

2.7 Since the amount paid to Sri Debdas Dey is more than the exemption limit of Rs.10 lakh in a single financial year 2016-17, and since the said notice did not provide the required information/data, hence the figures reflected in their Balance sheet and Profit & Loss Account are taken as detailed below –

Financial Year	Amount Paid(Rs.) to Sub-contractors	Rate of S. Tax during the FY	% of S. Tax Payable as per the Notfn.	Taxes Payable (Rs.)				Source Document
				Service Tax (Rs.)	Ed/ SB Cess (Rs.)	SHE/KK Cess (Rs.)	Total(Rs.)	
2014-15	399774.50	12.36%	75%	35980	Ed. Cess 720	SHE Cess 360	37060	Party did not submit the data. Their P&L A/c for FY 2015-16 was downloaded from website, of which "Note 19 Other Expenses" relating to "For the year ended 31 March,2015" described the value taken.
2015-16	2183670.72	14.5%	100%	305714	SB Cess 10918	0	316632	Note 19 other expenses of P&L A/c of 2016-17
2016-17	2199354	15%	100%	307910	SB Cess 10997	KK Cess 10997	329904	-do-
2017-18 (up to 30.06.17)	796504	15%	100%	111511	SB Cess 3983	KK Cess 3983	119477	Profit & Loss A/c.1-Apr-2017 to 30-Jun-2017.
			Total	761115	Ed	SHE	803073	

10. When the Show Cause Notice and Spot Memo are read together, it is seen that in the Spot Memo the audit team has termed the service as "Works Contract Service" and not as "Supply of Manpower Services". For the period 2016-17, the audit team has arrived at the total consideration as Rs.21,99,343/- for which they had directed the Appellant to pay Rs.65,981/-. On the other hand, terming the same as 'Supply of Manpower Services' as can be seen from the Table above, for

the same amount of Rs.21,99,354/- the Revenue has issued demand of Rs.3,29,904/-. The documentary evidence also proves that the Appellant has not availed any 'Manpower Services' from the sub-Contractor. Therefore, on this ground itself, the confirmed demand is required to be set aside. I do so.

11. Apart from this I also find that the Chartered Accountant has issued a certificate clearly stating that the services rendered by the sub-Contractor is not at all 'Manpower Service'. The Chartered Accountant's Certificate is reproduced below:

Annexure – III

Abhishek Paul
A.C.A, B.Com. (Hons.)
Mobile: +91 9804738822/9836480453 (Whatsapp)
Off. (L): 033 4006 1013
E-mail: caabhishekpaul1988@gmail.com
Website: www.abhishekpaulandcompanyicai.org.in

Abhishek Paul and Comp
Chartered Account
26, Kalidas Patitundi L
Ground Fl
Kolkata – 700 026,
[Near Jatin Das Park Metro Stat

To Whom It May Concern

M/s. Bhadrish Construction Pvt. Ltd., Radhanagar Road, Asansol, Dist. PaschimBardhaman, Pin. – 713325 have produced Balance Sheets, P & L Account with Schedules, Bills raised bytheSub Contractors and other Accounts for the F. Y. 2014 -15 to 2017-18and letters dated 19.05.2017 and 14.08.2017 before the undersigned.

On detailed examination and scrutiny of the above records and documents so produced by the above company, the undersigned has found that the sub contractors raised bills on rate contract basis amounting to Rs. 3,99,774.50, Rs. 20,29,664.72, Rs. 21,99,354/ and Rs. 7,96,505/ in 2014-15, 2015-16, 2016-17 and 2017-18 (upto June, 2017). In 2015-16, one sub contractor raised bill for supply of manpower amounting to Rs. 1,54,006/(21,83,670.72 - Rs. 20,29,664.72) and the Company paid service tax with interest and penalty and intimated to the department by their letters dated 19.05.2017 and 14.08.2017 respectively.

The above certificate is issued after detailed examination and scrutiny of the above records and documents so produced by the above Company and is true to the best of knowledge and belief of the under signed.

Encl:- 1. Balance Sheets with P & L Accounts and Schedules for the 2014-15, 2015-16, 2016-17 and 2017-18; and

2. Copy of the letters dated 19.05.2017 and 14.08.2017.

FOR ABHISHEK PAUL COMPANY
CHARTERED ACCOUNTANTS
FRN : 327936E

Abhishek Paul

ABHISHEK PAUL
PROPRIETOR
MEM NO. : 304327
UDIN : 21304327AAAAGE5961

ABHISHEK PAUL AND COMPANY CHARTERED ACCOUNTANTS KOL-26

DATED : 17.04.2021
PLACE : KOLKATA

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12. From the above Certificate it is clear that sub-Contractors were rendering only lump sum service towards concreting and other Work Contract work and they were not rendering any 'Manpower Service' to

the Appellant. In only one case, the sub-Contractor has raised Bill for 'Supply of Manpower' on which Chartered Accountant has certified that Service Tax has been paid along with penalty and same was intimated to the Department on 19.05.2017.

13. Considering the above factual details, I set aside the impugned order and allow the Appeal. The Appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

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