

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No. 85332 of 2015

(Arising out of Order-in-Original No. 20/ST/2014/C dated 31.10.2014
passed by the Commissioner of Customs, Central Excise & Service Tax,
Nagpur)

M/s. Unique AssociatesAppellant
Plot no.13, Zende Chowk,
2nd Bus Stop, Gopal Nagar,
Nagpur

Vs.

Commissioner of Central Excise, NagpurRespondent
Nagpur Telanghedi Road,
Civil Lines, Post Box no. 81,
Nagpur

WITH

Service Tax Appeal No. 85333 of 2015

(Arising out of Order-in-Original No. 21/ST/2014/C dated 31.10.2014
passed by the Commissioner of Customs, Central Excise & Service Tax,
Nagpur)

M/s. Unique AssociatesAppellant
Plot no.13, Zende Chowk,
2nd Bus Stop, Gopal Nagar,
Nagpur

Vs.

Commissioner of Central Excise, NagpurRespondent
Nagpur Telanghedi Road,
Civil Lines, Post Box no. 81,
Nagpur

APPEARANCE:

Shri Jagdish Joshi, CA for the appellant
Shri M.P. Damle, AC (AR) for the respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER No: A/88467-88468 / 2018

DATE OF HEARING : 07.12.2018

DATE OF DECISION : 07.12.2018

PER: C J MATHEW

These appeals of M/s Unique Associates lie against orders-in-original no. 20/ST/2014/C dated 31st October 2014 and no. 21/ST/2014/C dated 31st October 2014 of Commissioner of Customs, Central Excise & Service Tax, Nagpur, which have disposed off notices for recovery of service tax of ₹84,34,946.35 for the period between 2007-08 and 2011-12 and of ₹43,57,849/- for 2012-13 besides charging interest under section 75 of Finance Act, 1994 and imposing penalties under section 76, 77 and 78 of Finance Act, 1994.

2. Appellant is a provider of various services but the dispute is restricted to non-payment of tax as provider of 'commercial and industrial construction service' which is taxable under section 65(105)(zzq) of Finance Act, 1994 with the service itself defined under section 65(25)(b) of Finance Act, 1994.

3. We have heard Learned Chartered Accountant for appellant and Learned Authorised Representative.

4. Of the works undertaken by appellant, it has been brought to our notice that accounting entries for work in progress was interpreted

as consideration received for the rendering of taxable service. Furthermore, works undertaken for the Central Railway was treated as repairs instead of as fresh construction by the adjudicating authority. Likewise, construction of escalator was also held to be repair work. In like manner, the task executed for M/s Krishna Construction was in the nature of a sub-contract for Central Public Works Department. The construction of residential premises which are not liable to tax have also not been taken into consideration in the impugned orders. According to Learned Counsel for appellant, the submission on miscellaneous work undertaken for Central Public Works Department and the National Environmental Engineering Research Institute has also not been disposed off in the adjudication order. It is also contended that similar works executed for the Department of Post, Maharashtra State Electricity Transmission Co Ltd and Bharat Sanchar Nigam Ltd were also erroneously included in the taxable service.

5. We take note that, in the impugned order, it was held that

'33.2 I have already held that construction meant for non-commercial purposes are not liable to service tax and accordingly dropped the demand on such construction as discussed supra. In respect of other constructions, the Noticee have not furnished the contract-wise details of receipt. The Noticee have also not furnished evidences whether amount received is gross

including free-supplied materials and amenities such as free water, free electricity etc.

xxx

34.3 I observe that the Noticee have not furnished contract-wise details of value of materials and services, copies of the bills and other documents to establish their claim.'

6. It is apparent that the adjudicating authority did not have the benefit of the submissions and various evidentiary documents that are claimed be in the possession of the appellant. In these circumstances, we are unable to ascertain the legality and propriety of the demand confirmed in the adjudication orders.

7. Accordingly, we set aside the impugned orders and remand the matter back to the original authority for decision afresh after taking into account the submissions made by appellants herein as well as the documents evidencing the non-applicability of Finance Act, 1994 on the consideration received by them.

(Operative part pronounced in Court)

(Dr. D.M. Misra)
Member (Judicial)

(C J MATHEW)
Member (Technical)