CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Service Tax Misc. (EH) Application No. 85555 of 2022

(on behalf of Appellant)

In

Service Tax Appeal No. 85727 of 2021

(Arising out of Order-in-Appeal No. AJV/252/RGD APP/2020-21 dated 24.02.2021 passed by the Commissioner of Central Tax, Central Excise and Service Tax, Raigarh,)

Asaya Builders & Developers LLP **.... Appellant**
D-4 Big Splash, Opp. MTNL Office,
Sector-17, Vashi, Navi Mumbai – 400705.

Versus

Commissioner of Central Tax, Central Excise & Service Tax, Belapur **.... Respondent**
CGO Complex, 10, CBD Belapur,
Navi Mumbai-400614.

Appearance:

Shri Bharat Raichandani, Advocate for the Appellant
Shri Piyush Badhe, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86172 /2022

Date of Hearing: 07.12.2022
Date of Decision: 07.12.2022

Per: S.K. MOHANTY

Heard both sides and perused the records.

2. Applicant has filed this miscellaneous application, seeking early hearing of appeal. On going through the averments made in the miscellaneous application, we are of the view that this is a fit case for consideration of out-of-turn hearing and accordingly, the miscellaneous application for early hearing is allowed.

3. Since the issue lies in a narrow compass, with the consent of both sides, we have taken up the appeal for hearing and disposal today.

4. The issue involved in this appeal for consideration by the Tribunal is whether, the appellant is eligible for refund claim of service tax paid by CIDCO on Lease payment of land, recovered from the appellant.

5. The Learned Advocate appearing for the appellant submitted that service tax is not payable on the transaction of lease of immovable property. Since the same was extended from the definition of service, as per Section 65B(44) of the Finance Act, 1994. The Learned Advocate further submitted that the issue with regard to taxability of the disputed service is not open for any debate, in view of the decision of this Tribunal in the case of Greater Noida Industrial Development Authority Vs. Commissioner of Central Excise and Service Tax, Noida–2015(38) S.T.R. 1062(Tri. – Del.) and subsequently upheld by the Hon'ble Allahabad High Court reported in 2015(40) S.T.R. 46 (All.).

6. We find that the authorities below have not dealt with the issue as per the judgments relied upon by the Learned Advocate for the appellant. Therefore, we are of the view that the matter should go back to the original authority for deciding the issue of taxability and the other aspects involved in the appeal. Accordingly, the refund application rejected by the adjudicating authority is restored to the original number and the same should be decided in accordance with law.

7. In the result, the appeal is allowed by way of remand to the original authority. Needless to say, that opportunity of personal hearing should be granted to the appellant before deciding the issue afresh.

(Dictated and pronounced in open court)

(C.J. Mathew)
Member (Technical)

(S.K. Mohanty)
Member (Judicial)

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