CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI
REGIONAL BENCH, COURT NO. 5

SERVICE TAX APPEAL NO. 85519 OF 2021
(Arising out of Order-In-Original No. GOA/EXCUS/000/COMMR/003/2020-21 dated 31.12.2020 passed by Commissioner Central Goods and Service Tax, Goa Commissionerate.)

TIMBLO DRYDOCKS PVT. LTD.
Subhash Timblo Bhavan, Isdorio Baptista Road,
Margao South,
Goa,
Maharashtra- 403 601.

Appellant

Vs.

COMMISSIONER OF CUSTOMS, GOA
GST Bhavan, EDC Complex,
Patto Plaza, Panaji,
Goa- 403 001.

Respondent

Appearance:
Shri C.S. Birader, Advocate for the Appellant.

Shri Pathan Adeeb Daulatkhan, Deputy Commissioner, Authorized Representative for the Respondent.

CORAM:
HON'BLE MR. ANIL.G.SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 05.03.2024
Date of Decision: 05.03.2024

FINAL ORDER – 85274/2024.

PER : ANIL.G.SHAKKARWAR

The present appeal is against the impugned order-in-original through which service tax of around Rs.15 lakhs is demanded along with interest and penalty.

2. Appellant is engaged in construction and repair of ships and barges. On the basis of scrutiny of ST returns and annual financial statements, a demand was raised against the appellant through show cause notice dated 23.08.2019. The said demand was of around Rs.2 crores. The said show cause notice was adjudicated by the Original authority. Original authority has dropped the demand except for around Rs.15 lakhs which is confirmed and the same is challenged in the present appeal.

3. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that service tax of Rs.13,14,928/- is confirmed as

service tax payable by the appellant on reverse charge mechanism in respect of blasting and painting service received by the appellant. Another demand confirmed was of Rs.11,35,787/- under reverse charge mechanism in respect of consultancy charges paid by the appellant for receiving consultancy as confirmed by original authority for the reason that consultancy and legal charges paid are combinely recorded in the books of accounts. Original authority has confirmed the demand of Rs.96,589/- on repair and maintenance service received by the appellant and the demand is confirmed under reverse charge mechanism. There is another balance of Rs.45,062/- confirmed as service tax payable by the appellant which the appellant is not pressing. In respect of reverse charge demand on blasting and painting, he has submitted that there were two corporate entities who had provided the said service to the appellant and as per Notification No.30/2012-ST dated 20.06.2012, the service receiver is not required to pay under reverse charge mechanism when the service is provided by a corporate entity. In respect of confirmation of demand on consultancy charges, learned counsel has submitted that Revenue did not have any documents to rely that the said service tax was in respect of legal consultancy received by the appellant. He has submitted that for legal consultancy, appellant has paid service tax under reverse charge mechanism and the present demand is in respect of consultancy other than legal consultancy received by the appellant and liability to pay service tax for consultancy other than legal consultancy is on service provider. In respect of demand on repair and maintenance charges, he has submitted that the demand on repair and maintenance is not covered under reverse charge mechanism. They had received said service.

4. Heard the learned AR for Revenue. Learned AR has agreed that the notification requiring the service receiver to pay under reverse charge mechanism does not include repair and maintenance service.

5. I have carefully gone through the record of the case and submissions made. I find that the show cause notice was issued without scrutinizing the appellant’s record related to documents of services received by the appellant. The show cause notice was issued on comparing the date in the financial statements and ST-3 returns. It was the responsibility of Revenue that wherever the data between financial statements and ST-3 returns did not tally, they should have called for more information, scrutinized the information and made out a prima facie case that service tax was payable by the appellant and then should have issued show cause notice. Since that process of issue of show cause notice was not adopted, the contention of the appellant that blasting and painting services were provided by corporate entity and the consultancy was in respect of consultancy other than legal consultancy are accepted. Since both the parties agree that repair and maintenance is not covered by reverse charge mechanism, the demand of Rs.96,589/- does not sustain along with interest and penalty. Since the appellant is not pressing for confirmation of demand of Rs.45,062/-, the balance demand confirmed along with interest and penalty is set aside. Impugned order is modified to that extent.

6. In above terms, appeal is allowed in part.

(Dictated and pronounced in open court.)

(ANIL.G.SHAKKARWAR)
MEMBER (TECHNICAL)

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