(2024) 02 CESTAT CK 0032

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 13116, 13117 Of 2014

Aneesh Engineers APPELLANT

Vs

C.C.E. & S.T.-Ahmedabad-III RESPONDENT

Date of Decision : 19-02-2024

Acts Referred:

Citation : (2024) 02 CESTAT CK 0032

Hon'ble Judges : Ramesh Nair, Member (J);C L Mahar Member (T)

Bench : Division Bench

Advocate : Vipul Khandhar, Sanjay Kumar

Final Decision : Allowed

Judgement

Ramesh Nair, Member (J)

1. The brief facts of the case are that the appellant have under taken the job of construction with material. However, the service tax was paid under Commercial or Industrial Construction Services only in respect of service portion. The case of the department is that the value of material also needs to be included in the construction services. Accordingly, differential service tax demand was confirmed.

2. Shri Vipul Khandhar, Learned Chartered Accountant appearing on behalf of the appellant at the outset submits that the appellant have raised the issue that since the construction service was provided along with material and necessary state VAT was paid the service is classifiable under 'works contract service'. The period involved is prior to 01.06.2007, therefore, during the relevant period, the 'works contract service' was not taxable, for these reasons, the demand is not sustainable. He requested that the factual aspects of service whether it falls under 'works contract service' or otherwise has not been examined. Therefore, he prays for remand of matter to examine the nature of the services as 'works contract service'.

3. Shri Sanjay Kumar, Learned Superintendent (AR) appearing on behalf of the

revenue reiterates the findings of the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of records, we find that now the appellant has raised very vital issue that since the construction service was provided along with the material and VAT was paid as claimed by them, the service is prima facie classifiable under ‘works contract service’ and if the effect of such nature of services is given the same will directly affect the demand of service tax raised by the department. However, whether the service is works contract service or otherwise, it involves various factual aspects, only after ascertaining the same it can be concluded that the service is classifiable under ‘works contract service’. Only thereafter it can be determined whether any tax liability is due against the appellant. Accordingly, the matter needs to be re-considered for verification of fact related to claim of the appellant that whether the service is classifiable under works contract service or otherwise.

5. Therefore, the impugned order is set aside. Appeals are allowed by way of remand to the Adjudicating Authority keeping all the issues open.