(2024) 06 CESTAT CK 1548

In the Customs, Excise And Service Tax Appellate, New Delhi

Case No : Service Tax Appeal No. 51283 of 2017

ASK Engineers Company — APPELLANT

Vs

Commissioner of Central Excise — RESPONDENT

Date of Decision : 27-06-2024

Acts Referred:

Central Excise Act, 1944 — Section 11B
Finance Act, 1994 — Section 83

Citation : (2024) 06 CESTAT CK 1548

Hon'ble Judges : Dilip Gupta, President (J);Hemambika R. Priya, Member (T)

Bench : Division Bench

Advocate : Om P. Agarwal, S.K. Meena

Final Decision : Dismissed

Judgement

Dilip Gupta, J

1. M/s. ASK Engineers Company, the appellant has filed this appeal for setting aside the order dated 19.04.2017 passed by the Commissioner (Appeals) Customs and Central Excise, Jaipur, the Commissioner (Appeals) by which the order dated 08.08.2014 passed by the Assistant Commissioner has been upheld and the appeal has been dismissed. The Assistant Commissioner, by the said order, rejected the refund of Rs. 2,11,625/- claimed by the appellant under section 11B of the Central Excise Act, 1944, the Central Excise Act read with section 83 of the Finance Act, 1994, the Finance Act.

2. The appellant claims to have executed two construction works. The first was regarding the administrative building of the swimming pool at Samrat Ashok Udyan for the Rajasthan Housing Board. According to the appellant, this Udyan is a public garden, and, therefore, construction was for a non-commercial activity on which no service tax would be leviable under Entry no. 12(a) of the exemption Notification dated 20.06.2012 effective from 01.07.2012. The second work related to construction of a compound wall on a vacant colony for the Rajasthan

Housing Board. According to the appellant, construction of such a wall in a vacant land would not be a taxable service as it is neither a commercial construction nor a construction of a residential complex.

3. The Rajasthan Housing Board had deposited service tax under the reverse charge mechanism on the said services and deducted the amount from the running bills of the appellant. The appellant, therefore, submitted application for refund of service tax claiming that the appellant was not liable to pay service tax.

4. The Assistant Commissioner, by order dated 08.08.2014, rejected the refund application. The claim relating to the construction work of the administrative building of the swimming pool at Samrat Ashok Udyan, the Assistant Commissioner was rejected for the reason that the appellant could not explain why the civil structure would be used predominantly for a purpose other than commerce. The contention of the appellant that construction of a wall in an open land was not taxable was also not accepted. The Assistant Commissioner also found as a fact that the claimant had not provided contract wise details of the agreements, which fact was also alleged in the show cause notice.

5. The Commissioner (Appeals) examined the provisions of clause 12(a) of the Notification dated 20.06.2012 and found that Ashok Udyan was a multi facility project comprising of large gardens, shopping, swimming stadium for international swimming competitions, and would in future also have an indoor stadium, restaurants, food courts and technology park. Thus, it included projects for commerce also. The Commissioner (Appeals) also noted that Rajasthan Housing Board was also aware that the appellant would have to pay service tax and that is why it required the appellant to pay the service tax. The Commissioner (Appeals) also noted that the work was not for construction of a public park but for administrative building of a swimming pool.

6. As regards the construction of the boundary wall, on a vacant land, the Commissioner (Appeals) found that the premises could be used by the Rajasthan Housing Board for commercial purposes and the appellant could not substantiate that it would be used only for non-commercial purposes.

7. Learned consultant appearing for the appellant has not been able to point out anything which may indicate that the two construction activities undertaken by the appellant were in respect of non-commercial activity. As noted above, the construction of the administrative building for the swimming pool cannot be said to be for a non-commercial activity merely because of the fact that it was located within the Samrat Ashok Udyan. Many commercial activities were to be carried out in the park. Learned consultant could not also satisfy that the premises where the boundary wall was to be constructed would be used for non-commercial activities.

8. For claiming exemption under a Notification, it is imperative for the appellant to substantiate the conditions set out in the notification.

9. The order passed by the Commissioner (Appeals), therefore, does not call for any interference. This appeal is, accordingly, dismissed.

(Order dictated and pronounced in the Open Court)

