(2023) 08 CESTAT CK 0046

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No.450 Of 2011

M/S. Vijay Construction — APPELLANT

Vs

Commissioner Of Central Excise & Service Tax, Ranchi — RESPONDENT

Date of Decision : 22-08-2023

Acts Referred:

Finance Act, 1994 — Section 76, 77
Finance Act, 2012 — Section 97

Citation : (2023) 08 CESTAT CK 0046

Hon'ble Judges : Ashok Jindal, Member(J);K. Anpazhakan, Member(T)

Bench : Division Bench

Advocate : S.S.Chattopadhyay

Final Decision : Allowed

Judgement

Ashok Jindal, Member(Judicial)

1. The appellant is in appeal against the impugned order wherein demand of service tax has been confirmed against them and penalty of Rs.5,000/- was also imposed under section 77 of the Finance Act, 1994 along with penalties under section 76 of the Finance Act, 1994.

2. The facts of the case are that the appellant was engaged in providing services of construction of guard wall along with road and fixing of grill in their quarters and also engaged in the activity of fixing of grill in the quarters of CPPS Colony, Chandrapur. The Demand of service tax was confirmed against construction of residential complex services. The appellant contested the demand that during the impugned period they were providing the service of fixing grills along with material and they are not liable to pay service thereon under the category of construction of residential complex and also not liable to pay service tax on guard wall as that is for the safety of the road and activity of construction of road has been exempted by section 97 of the Finance Act, 2012 for the impugned period, wherein it has been held that no service tax is leviable for the period in

question. But the authorities below confirmed the demand of service tax against the appellant along with interest and penalty under section 76 and 77 of the Finance Act were also imposed. Aggrieved from the said order, the appellant is before us.

3. None appeared on behalf of the appellant. Heard the Ld. AR for the revenue.

4. Considering the fact that the appeal can be disposed of without hearing the appellant, therefore, the appeal is taken up for disposal.

5. We find force in the ground taken by the appellant in their appeal papers that the merit classification of fixing of grill along with materials qualifies under 'works contract services' and no service tax demand has been raised against the appellant under 'works contract service'. In that circumstances, we hold that the demand of service tax under 'construction of residential complex' is not sustainable. Accordingly, the same is set aside.

6. We further hold that 'construction of road' was exempted for the impugned period by way of amendment in section 97 of the Finance Act, 2012, wherein any service related to construction of road has been declared exempt, therefore, we hold that appellant is not liable to pay service tax for the activity of construction of guard wall alongwith road.

7. In view of the above observations, we do not find any merit in the impugned order to demand service tax from the appellant. Accordingly, whole of the demand of service tax is set aside. As no demand is payable by the appellant, no penalty is imposable on the appellant.

In view of the above, we set aside the impugned and allow the appeal with consequential relief.