
(2023) 03 CESTAT CK 0005

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No.12106 Of 2013

Pawan Edifice Pvt Ltd

APPELLANT

Vs

C.C.E. & S.T-Vadodara-II

RESPONDENT

Date of Decision : 27-03-2023

Acts Referred:

Finance Act, 1994 — Section 65(30a), 65(91a), 65(105)(zzzh)

Citation : (2023) 03 CESTAT CK 0005

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

Bench : Division Bench

Final Decision : Allowed

Judgement

Ramesh Nair, Member (J)

1. The brief facts of the case are that the appellant received Rs.4,09,32,406/- from M/s. D S Properties during 2005-06 to 2008-09 for providing construction service in respect of residential complex namely 'Vicenza Repeat' having more than 12 units i.e. Construction of Residential Complex Service which was taxable service as defined under Section 65(30a), 65(91a) & 65(105)(zzzh) of the Finance Act, 1994 levied with effect from 16.06.2005. The case of the department is that the appellant failed to obtain service tax registration for the same and also failed to pay the service tax and filing of ST-3 returns for the said period. Later on, the appellant obtained service tax registration and paid service tax with effect from 01.06.2007 along with interest and penalty and filed ST-3 returns for the relevant period. A show cause notice was issued whereby, it was proposed to demand service tax of Rs.13,47,098/- along with interest and penalty as a differential service tax post 01.06.2007 and on the service tax not paid up to 01.06.2007. The said show cause notice was confirmed by the adjudicating authority vide Order-In-Original dated 31.03.2011. Being aggrieved by the said order-in-original, the appellant filed appeal before the Commissioner (Appeals) who also vide Order-In-Appeal No. PJ/610/VDR-II/2012-13 dated 25.03.2013 upheld the Order-In-Original and rejected the appeal therefore, the

present appeal filed by the appellant.

2. Shri Saurabh Dixit, learned counsel appearing on behalf of the appellant submits that the appellant have been providing the service of Works Contract even prior to 01.06.2007 and when the service tax was levied on Works Contract on 01.06.2007 they have obtained the registration and started paying service tax. He submits that there is no dispute that the service of construction was provided along with material and the appellant have been paying the VAT to the State Government. This fact is not under dispute therefore, the service of the appellant clearly falls under the category of Works Contract Service. It is his submission that the learned Commissioner (Appeals) denied the benefit of composition scheme of Works contract only on the ground that the appellant have not specifically opted for the service of works contract. He submits that it is not required in the present case that the appellant should opt for the Works Contract Service for the reason that the appellant right from the beginning maintained that they are providing the Works Contract Service. The option is required only in a case where the assessee is covered under the individual service of construction prior to introduction of Works Contract Service with effect from 01.06.2007 and want to switch from Construction Service to Works Contract Service which is not the case here therefore, the revenue's contention for denial of composition scheme on works contract is not legal and correct. He submits that the issue is covered by the following judgments:-

- TOTAL ENVIRONMENT BUILDING SYSTEMS PVT. LTD.- 2022 (83) GSTL 257 (SC)
- L & T LTD.- 2015 (39) STR 913 (SC)
- ST ELECTRICALS P.LTD.- 2019 (20) GSTL 273 (Tri-Mumbai)
- PRAGATI EDIFICE P.LTD.- 2019 (31) GSTL 241 (Tri.-Hyd)

3. We have carefully considered the submission made by both the sides and perused the records. We find that there is no dispute on the fact that the appellant have been providing the construction of residential complex along with material and they have paid the VAT to the State Government. In this regard, they have also produced the VAT returns. In this fact, there is no doubt that the service provided by the appellant is of Works Contract. It is also the fact that the appellant even before 01.06.2007 right from the beginning providing the service of Works Contract i.e. Construction of Residential Complex along with Material under payment of VAT. The hon'ble Supreme Court clearly held in the judgment of L & T (supra) that Works Contract Service prior to 01.06.2007 cannot be levied with service tax. Since the levy became effective from 01.06.2007, the appellant have correctly obtained the registration and started paying service tax under Works Contract Service. The reason for denial of Works Contract Service by the learned Commissioner (Appeals) is that the appellant should opt for the Works Contract Service. We are of the considered view that this option can be exercised only when the assessee wish to shift from one service to Works Contract Service which is not the case here. The appellant have been providing

Works Contract Service right from the beginning i.e. before 01.06.2007 therefore, on the very same service with effect from 01.06.2007, the service tax is leviable under Composition Scheme i.e. Works contract Service therefore, we are of the view that the appellant have rightly not paid the service tax before 01.06.2007 and correctly paid the service tax under Works contract Service with effect from 01.06.2007 therefore, the demand in the present case is not sustained.

4. Accordingly, the impugned order is set aside. Appeal is allowed.