
(2013) 09 AHC CK 0170

In the Allahabad High Court

Case No : Central Excise Appeal No. 222 of 2013

Sidharth Construction Co.

APPELLANT

Vs

Commr. of Cus., C. Ex. and Service Tax

RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Citation : (2014) 34 STR 343

Hon'ble Judges : Surya Prakash Kesarwani, J;Sunil Ambwani, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. We have heard Shri A.P. Mathur, learned counsel for the appellant. Shri B.K.S. Raghuvanshi appears for the Commissioner of Customs, Central Excise & Service Tax - the respondent. The appeal is admitted on substantial questions of law framed in the memorandum of appeal and finally heard with the consent of the parties.

2. In an appeal filed by the appellant against the adjudication order dated 28-11-2012 the CESTAT has while deciding the application for stay of pre-deposit found that the adjudication order assessed service tax demand of Rs. 2,17,2430/-. An amount of Rs. 1,22,89,670/- was also remitted under commercial or industrial construction service. The adjudicating authority ordered recovery of the balance tax liability with interest and penalty equal to the tax liability.

3. In the short order the CESTAT has while waiving pre-deposit of 50% of the balance amount has observed as follows:-

2. The appellant is a service tax registrant under the Act for providing commercial or Industrial Construction service. The service is defined in Section 65(105)(zzza) of the Act. The appellant filed its return and remitted tax after availing abatement under exemption Notification No. 15/2004-S.T., dated 10-9-2004. Revenue, however, proceeded against the appellant on the ground

that there was a miscalculation of the category of taxable service provided; that the service more appropriately falls within "site formation and clearance, excavation and earth moving and demolition", defined in Section 65(97a) read with Section 65(105)(zzza) of the Act, which does not accommodate any abatement under Notification No. 15/2004, dated 10-9-2004.

3. Prima facie, on perusal of contract in issue and the analysis by the adjudicating authority, some of the activities/services provided by the appellant fall within the site formation taxable service while others fall within commercial or industrial construction service. The adjudicating authority treated the entirety of services provided by the appellant as site formation services, outside the purview of commercial or industrial construction service and declined to grant abatement benefits under Notification No. 15/2004, dated 10-9-2004.

4. In the circumstances we see a strong prima facie case in favour of the petitioner and grant waiver pre - deposit and stay further proceedings pursuant to the adjudicating order, on the condition that the appellant remits 50% of the balance due of the assessed tax liability (of Rs. 2,17,24,330/-, after deducting Rs. 1,22,18,670/- already remitted and appropriated) plus the interest thereon (excluding the penalty component assessed under Sections 76, 77 and 78 of the Act), within 6 weeks from today and report compliance by 25-9-2013. In default of either deposit or reporting compliance within the time stipulated herein, the order of waiver shall stand rescinded and the appeal shall stand dismissed for failure of pre-deposit.

4. In the present case the dispute relates to appellant's registration, in the category of taxable services provided. The department was of the opinion that for providing commercial and industrial construction services as defined u/s 65(105)(zzza), for which abatement was allowed, the appellant's category of taxable services more appropriately falls within site formation and clearance, excavation and earth moving and demolition, defined in Section 65(97a) read with Section 65(105)(zzza) of the Act, and which does not accommodate any abatement. The Tribunal, however, despite holding that there is strong prima facie case in favour of the appellant after finding that some of the activities/services provided by the appellant fall within site formation taxable services while others within commercial or industrial construction service has not classified or apportioned the extent of such services for the purposes of consideration of waiver of pre-deposit.

5. We find that an amount of Rs. 1,22,18,670/- has already been appropriated towards the total service tax demand of Rs. 2,17,24,330/- and thus in the absence of any quantification of the services, which do not accommodate any abatement under notification dated 10-9-2004, the appellant is entitled to further relief.

6. In the facts and circumstances, we direct that in case the appellant deposits Rs. 22 lacs, the deposit of remaining amount shall be waived for hearing of the

appeal. The amount of Rs. 22 lacs will be deposited within six weeks from today. The appeal is accordingly disposed of.