

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.335 of 2010

(Arising out of Order-in-Revision No.02/COMMR/ST/ADJ/DIB/10 dated 25.06.2010 passed by Commissioner of Central Excise & Service Tax, Dibrugarh.)

Sri Mridul Phukan

(C/o. Mr.S.N.Yadaw, Shiv Mandir Road, Gabharu Pathar-Tinali, Dibrugarh, P.O.Dibrugarh, Dist. Dibrugarh, Assam-786001.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Dibrugarh

.....Respondent

(Milan Nagar, Lane 'F', P.O. C.R. Building, Dibrugarh-786003.)

APPEARANCE

Shri Amit Goyal, Advocate for the Appellant (s)

Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 76237/2023

DATE OF HEARING : 27 July 2023

DATE OF DECISION : 01.08.2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order.

2. The facts of the case are that a show cause notice was issued to the appellant alleging that the appellant neither registered as service tax assessee nor paid service tax as they have provided taxable service to M/s ONGC under the category of 'commercial or industrial construction service' during the period 01.04.2005 to 31.05.2006. A communication was made by the respondent to the management of M/s. ONGC requesting them to submit the details of list of service providers who have rendered service to them under the category of 'commercial & industrial construction service' during the impugned period along with copies of agreement. The ONGC submitted a list

including name of the appellant and payment particulars along with work order allotted to the appellant. On scrutiny of the above said list it was found that the appellant was entrusted by ONGC to render service as per the said work order. On through verification of the above said list, it was observed that the said service provider rendered the services in the civil constructions taken place in the different drilling Oil Fields belonged to M/s. ONGC. The show cause alleges that the services rendered by the appellant against the work orders during the period 2005-06 was covered under the category of 'commercial or industrial construction services' and service liability works out to Rs.6,54,635/-. Further, it was clarified by M/s. ONGC that the amount paid to the appellant was inclusive of service tax which was intimated to the department on 30.10.2006. On the basis of the said communication, a show cause notice was issued to the appellant on 30.05.2007 to demand service tax from the appellant which they have recovered from M/s. ONGC. The matter was adjudicated, demand of service tax was confirmed. Against the said order, the appellant is before us.

3. The Ld.Counsel fairly submitted that being old records the appellant is not able to ascertain the documents certifying that they have not received any service tax from M/s. ONGC for the work executed during the impugned period and although the work order is inclusive tax, but there was no intent to evade payment of duty by the appellant.

4. Heard the Id.Counsel for the appellant.

5. As the Ld.Counsel has failed to show the evidence that during the impugned period whether the appellant has recovered service tax from M/s. ONGC or not? In that circumstances, the only evidence available on record is that M/s.ONGC has stated in reply to query made by the respondent that the amount has been paid inclusive service tax. Therefore, the said amount paid to them inclusive of service tax and the appellant has not paid service tax collected from M/s. ONGC in this case.

6. In that circumstances, we hold that the appellant is liable to service tax for the impugned period along with interest. As it cannot be ascertained from the documents placed before us whether the appellant has deliberately not paid the service tax to the respondent during the impugned period, in that circumstances by giving the benefit of section 80 of the Finance Act, 1994, we hold that no penalty is imposable on the appellant. Therefore the same is set aside.

In view of this, the appeal is partly allowed.

(Order pronounced in the open court on 01.08.2023.)

Sd/

(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)