

No service tax on construction services for the period before June 1, 2007

The CESTAT, Kolkata in the case of *M/s. Solux Galfab Private Limited v. Commissioner of Central Excise & Service Tax, Kolkata [Service Tax Appeal No. 09 of 2011 dated September 25, 2023]* held that the assessee was not liable to pay service tax on construction services for the period before June 1, 2007. As there is a composite contract wherein supply of materials is also involved, therefore, it merits classification as works contract service, which was not in service tax net prior to June 1, 2007.

Facts:

M/s. Solux Galfab Private Limited, ("**the Appellant**") operated as a service provider, offering various services, including Business Auxiliary Service ("**BAS**"), Construction Service, Erection and Painting Service, and Goods Transport Agency ("**GTA**") Service. Directorate General of Central Excise Intelligence ("**DGCEI**") conducted an investigation and found that the Appellant had not paid service tax prior to July 03, 2006 for the services rendered.

A Show Cause Notice dated December 31, 2008 ("**the SCN**") was issued demanding service tax along with interest and penalty under Section 78 of the Finance Act, 1994 ("**the Finance Act**").

The appeal arose in response to an order issued by The Commissioner (Appeals) ("**the Respondent**") vide Order in Original No. 14/Commr./ST/ Kol/2010-11 dated September 08, 2010 ("**the Impugned Order**") confirmed the demand for service tax under the category of Construction Service. Aggrieved by the Impugned Order, the Appellant filed appeal before this Tribunal.

The Appellant, contended that the service tax had been confirmed under BAS, construction services and GTA services from June 1, 2007. However, the Appellant was engaged in construction services along with the supply of materials prior to June 1, 2007 and was not liable to pay services tax on the services rendered before June 1, 2007.

The Appellant further contended the payment of Rs. 42,50,000/- against the demand and if construction services were conducted prior to June 1, 2007, therefore the penalty is not leviable.

Issue:

Whether service tax is leviable on the Construction services, BAS and GTA services entered before June 1, 2007?

Held:

The CESTAT, Kolkata in the case of ***Service Tax Appeal No 09 of 2011*** held as under:

- Opined that, the Appellant does not dispute the liability for Business Auxiliary Service, Construction Service, and Goods Transport Agency Service from June 1, 2007, onwards, with a total service tax demand of Rs. 22,70,491.
- Observed that, prior to June 1, 2007, when there was a composite contract involving the supply of materials, the appropriate classification is works contract service, which was not subject to service tax before that date. Therefore, no service tax is payable by the Appellant for the period prior to June 1, 2007, under the category of construction services, and the demand for that period is set aside.
- Held that, no penalty is imposed on the Appellant and the demand for BAS, GTA services and construction services are taxable from June 1, 2007, and any excess amount paid by the Appellant will be refunded within 30 days.

Relevant Provision:

Section 76 of the Finance Act:

Penalty for failure to pay service tax:

Any person, liable to pay service tax in accordance with the provisions of section 68 or the rules made under this Chapter, who fails to pay such tax, shall pay, in addition to such tax and the interest on that tax amount in accordance with the provisions of section 75, a penalty which shall not be less than one hundred rupees for every day during which such failure continues or at the rate of two per cent. of such tax, per month, whichever is higher, starting with the first day after the due date till the date of actual payment of the outstanding amount of service tax.

***Provided** that the total amount of the penalty payable in terms of this section shall not exceed the service tax payable in terms of this section shall not exceed fifty per cent of the service tax payable.*

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