

**HIGH COURT OF TRIPURA
AGARTALA**

Central Ex.App. 4 of 2024

Union of India and Anr.

---Appellant(s)

Versus

M/s National Building Construction Corporation Ltd.

---Respondent(s)

For Appellant (s)	:	Mr. P. Datta, Advocate.
For Respondent(s)	:	Mr. B. N. Majumder, Sr. Advocate. Mr. K.K. Pal, Advocate.
Date of hearing and date of judgment and order	:	28.01.2025.
Whether fit for reporting	:	No

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order (Oral)

(T. Amarnath Goud, J)

Heard learned counsel for the parties.

[2] This is an appeal under Section 35G of the Central Excise Act, 1944, against the common Final Order No.76779-76783 of 2023, dated 19.09.2023 passed by the Central Excise & Service Tax Appellate Tribunal (CESTAT), Kolkata in Service Tax Appeal No.7 of 2011.

[3] It is the case of the appellant that M/S National Building Construction Ltd., Agartala engaged in executed Civil Engineering Projects, rendered consultancy services and development of real estate projects among others in the category of 'Construction Engineering & Consultancy Services' thus receiving agency charge @ 10% of the estimated project cost entrusted to them. On 09-09-2003 NBCC entered into agreement with the Chief Commissioner of Income Tax, Guwahati for design and construction of office building for Income Tax at Guwahati and agreed to receive agency charge @ 8% of the actual cost of the project.

[4] It was observed that NBCC, Agartala had received Rs.58.76 crore since December, 2001 as agency charge from their clients which are taxable and on which service tax amounting to Rs.4.70 crore (calculated @ 8%) have not been paid by the respondent which is recoverable. Therefore a notice was issued to NBCC requiring to show cause for demand and recovery of service tax of Rs.4.70 crore, payment of interest and imposition of separate penalty for failure to pay service tax and suppression/concealing value of taxable service.

[5] However, a corrigendum had been communicated on 17- 01-2006 in which the respondent had been made answerable to the Commissioner, Central Excise, Shillong who vide OIO dated 12-12-2007 ordered confirmation of demand and recovery of the service tax of Rs.4.70 crore and interest at applicable rate. A penalty of Rs.4.70 crore was also imposed on NBCC, Agartala.

[6] Being aggrieved NBCC filed appeal before the Hon'ble CESTAT, Kolkata against the order dated 12-12-2007 and accordingly Hon'ble CESTAT, Kolkata 14-10-2008 set aside the impugned order and remanded the matter to the adjudicating authority to allow NBCC a chance to produce necessary evidence with a view to bifurcating the amount attributable to Consulting Engineering Service charges and for quantifying the service tax leviable thereon.

[7] The Commissioner, Central Excise Shillong while proceeding for de-novo adjudication taken up various points which were not as per the specific direction of the Hon'ble Tribunal order and dropped the proceedings initiated against M/S NBCC Agartala. The appellant herein on being aggrieved by the de-novo adjudicating order dated 27-08-2010 preferred an appeal before the Hon'ble CESTAT, Kolkata but the same was rejected by the Hon'ble Tribunal vide its final order dated 19-09-2023 and upheld the order dated 27-08-2010 passed by the adjudicating authority.

[8] Being aggrieved by the Order-in-Original dated 27-08- 2010 passed by the Commissioner, Central Excise, Shillong and final order No. 76779 - 76783/2023 dated 19-09-2023 passed by the Hon'ble CESTAT, Kolkata the appellant has now preferred an appeal u/s 35G of the Central Excise Act, 1944 before this Court.

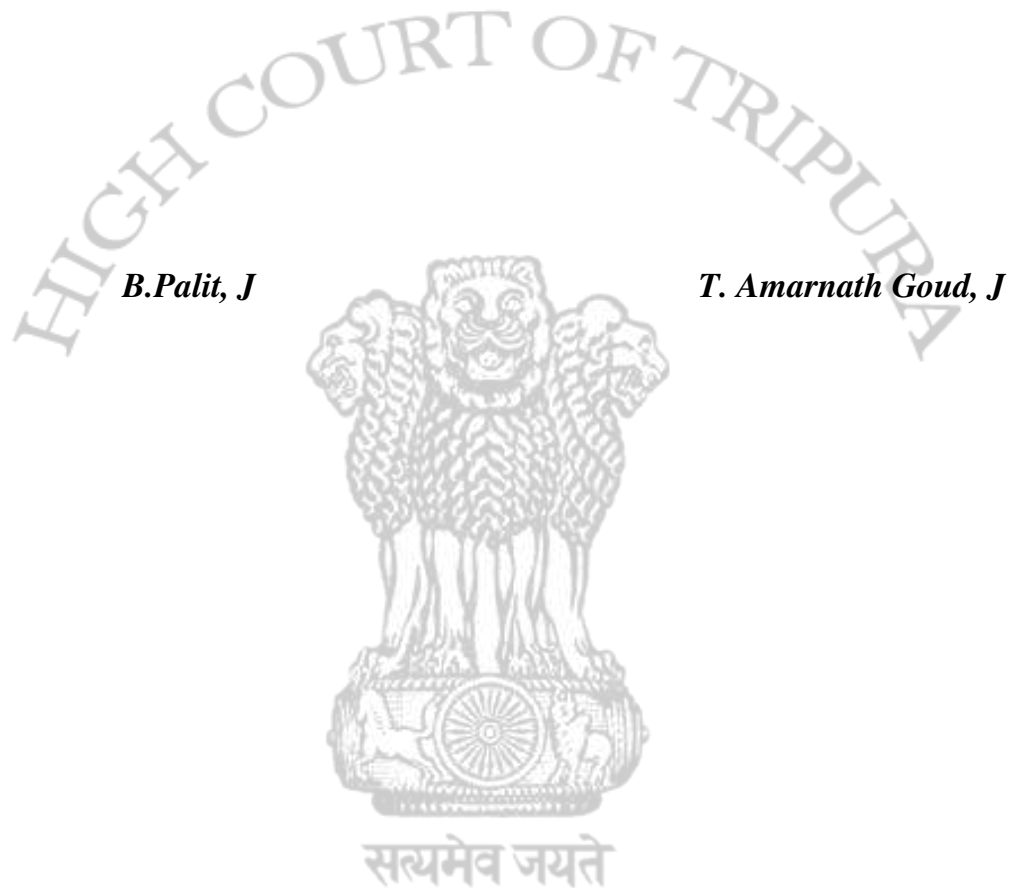
[9] There is a chequered history involved in this matter and going to the grass root level of this case the only point which falls for consideration is the show cause notice dated 22.12.2004 which is issued in favour of the respondent making a demand for Rs.4.70 crore by the appellant herein. On fair reading of the said notice, it appears that there is no whisper as to how Rs.4.7 crore the respondent company need to pay or the appellant-herein is entitled to the said claim by way of service tax. Though it is reflected in the show cause appended with the appeal, the said show cause notice pertains to imposition of Rs.4.7 crore but no ground is mentioned.

[10] In all fairness, the learned counsel for the appellant submitted before this court that the details of Rs.4.7 crore demand is not given in the said show cause notice. As far as show notice is concerned that also is the matter which fell for consideration before the Appellate Authority in all the quasi judicial proceeding for determination of the tax and the bifurcation was supposed to be done for claiming the tax amount.

[11] On the other hand Mr. B. N. Majumder, learned senior counsel for the respondent submitted before this court that there cannot be any imposition and collection of tax on composite contract amount. It relates to specific Engineering Consultancy Services and the appellate authority has not identified and made a specific demand on the point of Engineering Consultancy Services. In so far as the taxes that are payable by the NBCC, if not accepted, it is for the appellant

department to provide the bifurcated details and raise the demand. This matter has already been decided by tribunal and needs no fresh consideration.

[12] Having regard to the submission as advanced by Mr. B. N Majumder, learned senior counsel for the respondent, this court is of the opinion that the appeal needs no interference from this Court and hence the appeal stands dismissed being devoid of merit. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.



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