

GIB/WB/AMIT METALIKS/25-10-2019/OTHERS-10

Others Category : CESTAT

State : West Bengal

Order No.: GIB/WB/AMIT METALIKS/25-10-2019/OTHERS-10

Name of Entry :

AMIT METALIKS LIMITED VS. THE COMMISSIONER OF CENTRAL GOODS & SERVICE TAX.

Date : 25-10-2020

Breif Issue :

Facts & Issue of the case:

The Appellant is engaged in the business of manufacture and sale of M.S. Billets and M.S. Rods, TMT bars etc., classifiable under tariff item 72 to the First schedule of Central Excise Tariff Act, 1985, for which they are duly registered under the Central Excise Act, 1944 and also under the service tax with provisions of Finance Act.

As per the Development Agreement, the Appellant was to be provided by the companies a contiguous piece of land for the development. However, the same could not materialize. Hence, the Appellant could not get the land as agreed upon and as per the agreements were entitled for a liquidated damage or compensation.

The owners of the land has terminated Development Agreement due to some other technical reasons also and confirmed that they were not in a position to meet the 'Development Agreements' and agreed for the settlement with the Appellant. Ultimately, the Development Agreement with the Appellant was cancelled and the land owners agreed to pay the Appellant a sum of Rs. 21,90,00,000/- towards full and final settlement amount for terminating the said Development Agreement. In addition to this, the Appellant also received an amount of Rs. 1,97,50,000/- as compensation from M/s Amit Mines Limited towards the non supply of agreed manganese ore.

Issue involved was, whether the amount paid to the Appellant as per 'Settlement Agreement' and the compensation received from M/s Amit Mines Limited for non supply of manganese ore on account of rate difference are liable for service tax under 'Declared Service' under Section 66 E of the Finance Act or otherwise.

Decision of Advance Ruling Authority :

Decision

It was held that the entire sum of money would be classified as Actionable Claim which otherwise is beyond the scope of service tax under Section 66B (44) (iii) of the Finance Act. If the transaction of Development Agreement, Settlement Agreement and compensation not fall under 'Service' under the Finance Act there is no application of Section 66 E (e) of the Act.

The submissions of learned DR that the liquidated damage has been held to be liable for Central Goods and Service Tax has no relevance in this case of Maharashtra State Power General Company as the Finance Act and the CGST Act is different enactment and also the issue therein was non performance of service agreement and not with the development of land as per Development Agreement.

Thus for all the above reasons, authority set aside the impugned order and allow the appeal with consequential benefit as per law.