CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO – 3

Service Tax Appeal No. 402 of 2009-DB

(Arising out of OIA No. 109/2012-STC-/KANPAZHAKAN/COMMR-A-/AHD dated 29/03/2012 passed by Commissioner of Central Excise-AHMEDABAD-III)

Gujarat Apollo Industries Ltd. Appellant

Village : Ditasan,
Taluka : Jagudan,
MEHSANA, GUJARATPA.

-VERSUS-

C.C.E. & S.T., Ahmedabad-iii Respondent

Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad,
Gujarat, 380009

Present For the Appellant : Sh. P.M. Dave, Adv.

Present For the Respondent : Shri G.Jha, Supdt.(AR)

CORAM:

HON'BLE MEMBER (JUDICIAL) , MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. RAJU

FINAL ORDER NO. A/ 11060 / 2019

Date of Hearing: 13/05/2019

Date of Decision: 13/05/2019

RAMESH NAIR

In the present appeals, in the impugned order demand of Service Tax was confirmed on the service namely 'Erection, Commissioning and Installation Service' and 'Maintenance and Repair Service'.

2. Shri P.M. Dave, Ld. Counsel appearing on behalf of the appellant submits that considering the nature of the contract, it falls under works contract, as the appellant have executed the works along with material and the entire project value suffered sales tax by way of deduction at the recipient end. He submits that after the impugned order was passed the law developed on the issue involved in the present case and various judgments such as Larsen and Tuobro Ltd., and other judgments relying on the L&T case decided according to which, when the project is executed along with the material and sales tax was paid, it falls under 'works contract service' and therefore, the service is not taxable prior to 01.06.2007 under the head 'works contract'. As regard the period subsequent to 01/06/2007, he submits that even though the works contract service was liable to service tax after

01.06.2007, since no demand was under the head 'works contract' demand was raised under Erection, Commissioning and Installation services for the subsequent period, the demand is not sustainable. Therefore, he prays that since there are subsequent developments which can be considered also by verifying the facts involved in the case, matter may be remitted back to the original adjudicating authority. He placed reliance on the judgments in the case of Ajit India Pvt. Ltd. Vs. CST, Mumbai-II 2018 (19) GSTL 659 (Tri- Mumbai), ST Electricals Pvt. Ltd. Vs. CCE, Pune-I 2019 2019 (20) GSTL 273 (Tri- Mumbai), CCE & Cus., Kerala Vs. Larsen & Tuobro Ltd. 2015 (39) STR 913 (S.C.).

3. Shri Gobind Jha, Ld. Supdt. (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. We have heard both sides and perused the records. We find that the issue is whether the service provided by appellant falls under works contract or otherwise in the light of the various judgments given after the passing of the impugned order. Therefore, entire order needs to be relooked in the light of subsequent development of law on the issue in hand. We, therefore, set aside the impugned order and remand the matter to the Adjudicating Authority to pass a fresh order considering the facts of the present case and the various judgments relied upon by the appellant. Needless to say that the appellant shall be given sufficient opportunity of personal hearing and for making additional submissions, if any required. All the other issues are kept open. Appeal is allowed by way of remand to the Adjudicating Authority.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

Diksha