Customs, Excise & Service Tax Appellate Tribunal,
West Zonal Bench : Ahmedabad

REGIONAL BENCH - COURT NO. 3

Service Tax Appeal No. 243 of 2011

[Arising out of Order-in-Appeal No OIA-13/2011/AHD-III/KCG/COMMR-A-/AHD dated 28.01.2011 passed by Commissioner (Appeal) of Central Excise & ST, Ahmedabad]

Radhika Construction .... **Appellant**
15, Prashanti Society, Opp.
Maruti Flat, Radhanpur Road,
MEHSANA, GUJARAT-384002.

VERSUS

Commissioner of Central Excise & ST, Ahmedabad .... **Respondent**
CUSTOM HOUSE... 2ND FLOOR,
OPP. OLD GUJARAT HIGH
COURT, NAVRANGPURA,
AHMEDABAD, GUJARAT-380009

APPEARANCE :

Advocate for the Appellant
for the Respondent

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

FINAL ORDER NO. A/11371 / 2019

DATE OF HEARING : 18.07.2019
DATE OF DECISION: 18.07.2019

RAMESH NAIR :

Shri Vipul Khandhar, Ld. Chartered Accountant appearing on behalf of the appellant submits that the department has demanded service tax for the period 01.04.2004 to 31.03.2008 under the category of Commercial or Industrial Construction Service. He submits that their service correctly falls under Works Contract service as they have executed the work along with the material and State VAT was paid. Therefore, it is a Works Contract service and consequently the demand for the period 01.04.2004 to 31.05.2007, service tax is not payable in terms of Hon'ble Supreme Court decision in the case of *CCE, Kerala vs. Larsen & Toubro Limited – 2015 (39) STR 913 (SC)*. He fairly concedes that appellant is not disputing the liability of service tax for the period 01.04.2007 to 31.03.2008 and they have also paid the service tax along with interest.

2. On a query from the bench, he submits that the issue of Works Contract was raised before the Adjudicating Authority but he has not accepted on the ground that the decision in the case of *Larsen & Toubro Limited was* pending before the Hon'ble Supreme Court.

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

4. Heard both sides and perused the records. We find that, after further development in the law in the case of *Larsen & Toubro Limited (supra)* the issue needs reconsideration whether the service falls under the Works Contract service and if it is so, then the service tax for the period 01.04.2004 to 31.05.2007 is not payable. Therefore, the matter needs to be reconsidered whether the service falls under the Works Contract or otherwise. As regards the servicer tax liability for the period 01.06.2007 to 31.03.2008, the appellant is not contesting and they have already paid along with interest, therefore the same is maintained.

5. In view of our above discussion, the matter is remanded to the Adjudicating Authority.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

(Raju)
Member (Technical)

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