IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos. ST/1659 & 1752/2011-CU[DB]

(Arising out of Order-in-Original No. 16/Commissioner/ST/2011 dated 29/07/2011 passed by Commissioner of Central Excise, Customs & Service Tax, Kanpur)

The Commissioner, Central Excise & Service Tax, Kanpur (in Appeal No. ST/1659/2011) **&**

M/s Kailash Electricals (in Appeal No. ST/1752/2011) **Appellant(s)**

Vs.

M/s Kailash Electricals, &

Commissioner, Customs, Excise & Service Tax, Kanpur

Respondent(s)

Appearance:

Shri Mohd Altaf (Asstt. Commr.) AR for Revenue
Shri Dharmendra Srivastava (CA) for Assessee

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 06/08/2018
Date of Decision : 06/08/2018

FINAL ORDER NOs. **71844-71845 / 2018**

Per: Archana Wadhwa

Both the appeals one filed by the assessee and the other by the Revenue are being disposed by a common order as they arise out of the same impugned order passed by the Commissioner vide which he has confirmed the demand of Rs.3,65,19,824/- (Rupees Three crore sixty five lakh nineteen thousand and eight hundred twenty four only) alongwith the imposition of penalties.

2. Revenue is in appeal on the ground that the common penalties stand imposed under Sections 76, 77 & 78 of the Finance Act, 1994.

3. After hearing both the sides duly represented by Shri Mohd Altaf (Asstt. Commr.) AR for the Revenue and Shri Dharmendra Srivastava (CA) for the Assessee, we note that the demand stands confirmed against the appellant for the period from 01.10.2004 to 31.03.2009 under the category of Erection, Commissioning and Installation. The appellant had taken a categorical stand before the Adjudicating Authority that services provided by them would fall under the category of 'Works Contract', which were made taxable only w.e.f. 01.06.2007. For the subsequent period to 01.06.2007, the appellant contested the demand on the ground that they have executed the work for the Railways which is exempted services in terms of the definition itself. For the above propositions learned Advocate relies upon the Hon'ble Supreme Court's decision in the case of Commissioner of Central Excise & Customs, Kerala vs. Larsen & Toubro Ltd. reported in 2015-TOIL-187-SC-ST

4. Learned AR appearing for the Revenue submits that inasmuch as the said decision of the Hon'ble Supreme Court

was not available at the time of passing of the impugned orders and the applicability of the same is to be examined in the terms of the contract entered into by the appellant with the service recipient, the matter is required to be re-examined. As regards the subsequent period he submits that the appellant has also provided services to IIT, Kanpur and as such he is liable to pay service tax in respect of the same.

5. We agree with contention of the learned AR. The applicability of the Hon'ble Supreme Court's decision on 'Works Contract' in the above referred case, is required to be examined by referring to the terms and conditions of the various contracts. Such verification can be done only at the level of the Original Adjudicating Authority. Accordingly, we deem it fit to set aside the impugned order and remand the matter to Commissioner for fresh adjudication in the light of the declaration of law by the Hon'ble Supreme Court in the case of Larsen & Toubro Ltd., (supra). Inasmuch as the matter is being remanded to the Adjudicating Authority would also examine the appellant's plea of services rendered to Railways being exempted, as also the demand being barred by limitation.

6. Further, as we have remanded the appellant's appeal, the Revenue's appeal which is only for imposition of separate penalties under separate sections is also being remanded for fresh decision alongwith assessee's appeal.

7. Both the appeals are allowed by way of remand.

(Dictated and pronounced in Court)

Sd/-	**Sd/-**
Anil G. Shakkarwar)	**(Archana Wadhwa)**
Member (Technical)	**Member (Judicial)**

Ankit