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

APPEAL Nos. ST/602 & 662/2012-CU[DB]

(Arising out of Order-in-Appeal No. 39-ST/APPL/KNP/2012 dated 14/02/2012 passed by Commissioner, Customs, Central Excise & Service Tax(Appeals), Kanpur)

Commissioner, Central Excise & Service Tax, Kanpur

(in Appeal No. ST/602/2012) **&**

M/s A.M. Beston Suppliers (in Appeal No. ST/662/2012) **Appellant(s)**

Vs.

M/s A.M. Beston Suppliers

Commissioner (Appeals), Customs & Central Excise, Kanpur

Respondent(s)

Appearance:

Shri Gyanendra Kumar Tripathi (AC) AR for Revenue
Shri Anurag Mishra (Advocate) &
Ms Pragya Pandey (Advocate) for Assessee

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 28/12/2018
Date of Decision : 28/12/2018

FINAL ORDER NOs. **70060-70061/2019**

Per: Anil G. Shakkarwar

Above stated two appeals are arising out of common impugned Order-in-Appeal No.39-ST/APPL/KNP/2012 dated 14.02.2012 passed by Commissioner (Appeals), Customs, Central Excise & Service Tax, Kanpur.

Appeal No. ST/602/2012 is filed by Revenue and the other Appeal No. ST/662/2012 is filed by Service Provider.

2. Brief facts of the case are that the service provider M/s A.M. Beston Suppliers were engaged in providing services to Indian Oil Corporation, M/s Reliance Engineering Associate Ltd. and Indian Railways. The dispute arose between Revenue and Service Provider for the period from 01.04.2004 to 31.03.2009 regarding the classification of services provided. It appeared to Revenue that services provided by service provider were classifiable under “Commercial or Industrial Construction Service” whereas the contention of service provider was that the services provided by them were classifiable under “Works Contract Service”. The issue was finally decided by learned Commissioner (Appeals) through impugned order in Appeal wherein the learned Commissioner (Appeals) has taken into consideration the fact that the contracts executed by the service provider were composite contract where material was used and the ownership of the material used was transferred and VAT was paid by the service provider and, therefore, learned Commissioner (Appeals) through impugned order has held services provided by the service provider-appellant to be works contract service. Works contract service came into effect from 01.06.2007. The learned Commissioner (Appeals) has held that prior to 01.06.2007 the said services were covered under Commercial

or Industrial Construction Service. Learned Commissioner (Appeals) has also considered that appellant had paid service tax under Works Contract Service. The learned Commissioner (Appeals) has held that service tax to the tune of Rs.46,40,166/- was payable by the service provider. However, learned Commissioner (Appeals) has set aside the equal penalty imposed by Original Authority. Aggrieved by setting aside of equal penalty, Revenue is in appeal before this Tribunal and on confirmation of service tax under Commercial or Industrial Construction Service, service provider is before this Tribunal.

3. Both sides agreed that learned Commissioner (Appeals) has held the same services as Works Contract Service for the period w.e.f. 01.06.2007 and held the same services to be Commercial or Industrial Construction Service for the period prior to 01.06.2007. Learned counsel appearing for the service provider has submitted that Hon'ble Supreme Court in the case of Commissioner of Central Excise & Customs, Kerala vs. Larsen & Toubro Ltd. reported at 2015 (39) S.T.R. 913 (S.C.) has held that before 01.06.2007 there was no machinery provision for collection of service tax on Works Contract Services and, therefore, pleaded for setting aside the confirmation of demand.

4. On careful consideration of the facts of the case and submissions made by learned counsel for the service provider

we note that the issue is squarely covered by the ruling of Hon'ble Supreme Court in the above stated case of Larsen & Toubro. We, therefore, do not find confirmation of demand on same work for the period prior to 01.06.2007 under Commercial or Industrial Construction Services to be sustainable.

5. We, therefore, set aside the confirmation of demand through impugned order and allow the appeal filed by M/s A.M. Beston Suppliers. Since the confirmation of demand was found to be unsustainable there is no merit in appeal filed by Revenue. We, therefore, dismiss the appeal filed by Revenue.

(Pronounced in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Ashok Jindal)
Member (Judicial)

Ankit