CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 1255 of 2010

(Arising out of Order-in-Appeal No. 157/2010 dt. 22/03/2010 passed by Commissioner Of Central Excise(Appeals), Mangalore)

Mathias Aluminium Systems Pvt. Ltd.,
City Point,
Kodialbail,
Mangalore – 575 003.

Appellant(s)

VERSUS

Commissioner of Central Excise,
Trade Centre, Bunts Hostel Road,
Mangalore 575 003.

Respondent(s)

APPEARANCE:

Mr. Akbar Basha, Chartered Accountant for the appellant.
Mr. H. Jayathirtha, Superintendent(AR) for the respondent.

CORAM:
HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mr. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 20720 / 2023

Date of Hearing: 18/07/2023
Date of Decision: 18/07/2023

Per : DR. D.M.MISRA

This is an appeal filed against the Order-in-Appeal No. 157/2010 dt. 22/03/2010 passed by Commissioner Of Central Excise(Appeals), Mangalore.

2. Briefly stated the facts of the case are that the appellants are engaged in manufacturing of aluminium windows, aluminium doors, aluminium partitions, furniture etc. and also engaged in execution of work by providing structural glazing, false ceiling work, ACP cladding, curtain walling painting, wood and metal joinery and carpentry, laying floor tiles and repair work etc. During the relevant period 16/06/2005 to 31/05/2007, they have rendered services like false ceiling, glazing etc. by supplying materials along with services as per the individual work orders issued by various clients. Alleging that the services rendered by the appellant qualify under the individual levy and not be treated as works contract service, demand notice was issued to them for the said period on 21/10/2008 proposing recovery of service tax under individual category of services rendered. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed appeal before the Commissioner(Appeals) who in turn also upheld the order of the adjudicating authority. Hence the present appeal.

3. At the outset, the learned Chartered Accountant for the appellant submits that levy of service tax on works contract service came into force w.e.f. 01/06/2007. He submits that

invariably in almost all cases along with materials, they also rendered various services; therefore the job undertaken and completed by them qualify to be works contract service. It is his submission that levy of service tax prior to 01/06/2007 on works contract services is no more res integra and covered by the judgment of the Hon'ble Supreme Court in the case of CCE, Kerala Vs. Larsen & Toubro Ltd. [2015(39) STR 913 (SC)].

3. Learned AR for the Revenue reiterates the finding of the lower authorities.

4. Heard both sides and perused records. We find that the issue involved in the present appeal relates to applicability of service tax for composite contracts where materials along with the services were rendered by the appellant to various clients during the relevant period 16/06/2005 to 31/05/2007. Rejecting their contention by vivisecting the contract, the authorities below have confirmed the demand for services rendered by the appellant and imposed penalty. We find, prima facie, that the issue is covered by the judgment of the Hon'ble Supreme Court in the case of CCE, Kerala Vs. Larsen & Toubro Ltd.(supra). However, to analyse in detail, it is necessary to remand the matter to the adjudicating authority to ascertain whether all contracts entered by the appellant with their clients are in the nature of works contract service or some contracts are only for supply of services. To ascertain the said position, the matter is remanded to the

adjudicating authority. All issues are kept open. Needless to say that principles of natural justice be followed by affording opportunity of hearing to the appellant. The appeal is allowed by way remand.

(Dictated and pronounced in open court)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja...