CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/379/2008-DB

[Arising out of Order-in-Appeal No. 44/2008 dated 23/07/2008 passed by the Commissioner of Central Excise, Mangalore]

Swamy Electricals
Swamy Towers, Udgir Road, Bidar

Appellant(s)

Versus

C.C.E. & S.T.-Mangalore
7th Floor, Trade Centre,
Bunts Hostel Road,
Mangalore – 575 003,
Karnataka

Respondent(s)

Appearance:

Mr. Pradyumna, Advocate — For the Appellant

Mr. K. Murali, Superintendent (AR) — For the Respondent

Date of Hearing: 10/08/2018
Date of Decision: 16/08/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21166/2018

Per: S.S GARG

The present appeal is directed against the impugned order dated 23.07.2008 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has confirmed the duty demand along with interest but set aside the penalties. Briefly the facts of the present case are that acting on the intelligence that the appellant had undertaken works for

Government Agencies and Local bodies but had not paid service tax under the category of 'Erection, Commissioning and Installation Services' during the period July 2003 to March 2006, the officers of DGCEI, Bangalore Zonal Unit proceeded against the appellant during April 2006. During the course of application, the appellants were told that the services rendered by them attract service tax levy under the category of 'Erection, Commissioning or Installation Service' as defined under Section 65(105) (zzd) of the Finance Act 1994 and service tax was payable by them on the service portion. Accordingly the service tax liability of Rs. 2,54,972/- (Rupees Two Lakhs Fifty Four Thousand Nine Hundred and Seventy Two only) was worked out by DGCEI which was paid by the appellant along with interest of Rs. 20,669/- (Rupees Twenty Thousand Six Hundred and Sixty Nine only) during the investigation. Thereafter a show-cause notice dated 25.04.2006 was issued by DGCEI demanding the service tax along with interest and penalties. After following the due process, the original authority vide order dated 18.04.2007 confirmed the demand along with interest and also imposed penalties under Sections 76, 77 and 78 of the Act. Aggrieved by the said order, appellant filed appeal before the Commissioner and the Commissioner rejected the appeal but dropped the penalties.

2. Heard both the parties and perused the records.

3. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without considering the law and the evidence on record. He further submitted that there is no

dispute about the fact that the appellant had executed works contract involving both supply and service for customers like Bangalore Development Authority, Karnataka Industrial Area Development Board. He further submitted that the service tax has been demanded on the service portion by vivisecting composite contract of work. He further submitted that the Commissioner (Appeals) has not considered the additional evidence which was placed by the appellant in respect of his case by producing the decision of the Tribunal on the ground that additional evidence cannot be produced before the appellate authority. He further submitted that the issue involved in the present case is no more *res integra* and has been settled by the Hon'ble Apex Court in the case of *Commissioner of Central Excise and Customs, Kerala Vs. Larsen & Toubro Ltd. reported in 2015 (39) S.T.R. 913 (S.C)* wherein the Hon'ble Apex Court has overruled the Larger Bench of the CESTAT and it was held that service tax could not be levied on Works Contract for the period prior to 1st June 2017. Learned counsel further submitted that the ratio of the Apex Court has been relied upon by the following decisions:

a. *Pioneer Fabrications Pvt. Ltd. Vs. Commr. of Central Excise, Meerut [2016 (42) S.T.R. 563 (Tri.-All.)*
b. *Vistar Constructions Pvt. Ltd. Vs. Commr. of Service Tax, New Delhi – [2016 (44) S.T.R. 675 (Tri.-Del.)*
c. *C.C.L. Products (India) Ltd. Vs. Commr. of Cus, C.Ex & S.T, Guntur [2017 (48) S.T.R 50 (Tri.-Hyd.)]*
d. *Siemens Ltd. Vs. Commr. of Service Tax, Mumbai [2017 (49) S.T.R. 458 (Tri.-Mumbai)]*

4. On the other hand the learned AR defended the impugned order and submitted that the appellant had voluntarily paid the service tax along with interest and has only prayed for dropping the penalties. He further submitted that the plea of limitation is also not acceptable and the extended period was rightly invoked.

5. After considering the submissions of both the parties and perusal of the material on record, we find that admittedly the work executed by the appellant was a 'works contract' as per the Works Contract Order placed on record involving both supply and service for the customers like Bangalore Development Authority plus Karnataka Industrial Area Development Board. Further we find that the period involved in the present case is July 2003 to March 2006 and as per the judgment of the Hon'ble Apex Court, service tax cannot be levied on works contract for the period prior to 1^{st} June 2007 and the period in the present case is prior to 1^{st} June 2007. Therefore, the appellant was not liable to pay service tax. Accordingly, the impugned order is set aside by allowing the appeal of the appellant, with consequential relief.

(Order Pronounced in Open Court on **16/08/2018**)

(P. ANJANI KUMAR)
TECHNICAL MEMBER

(S.S GARG)
JUDICIAL MEMBER

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