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

Appeal(s) Involved:

ST/413/2007-DB

[Arising out of Order-in-Appeal No.36/2007 dated 20/08/2007 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.]

M/s. TATA MOTOR INSURANCE SERVICES LTD.
(Formerly known as M/s. Concorde Motors Ltd.)
9/8 HOSUR ROAD DIVISION NO.63
BANGALORE – 560 029.

Appellant(s)

Versus

The Commissioner of Central Tax and Customs (Appeals)
No.16/1, 5th Floor, SP Complex,
Lalbagh Road,
Bangalore – 560 027.

Respondent(s)

Appearance:

Mr. Syeed Peeran, Advocate

For the Appellant

Mr. N. Jagadish, AR

For the Respondent

Date of Hearing: 17.04.2018
Date of Decision: 14.08.2018

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. DEVENDER SINGH, TECHNICAL MEMBER

Final Order No. 21139 / 2018

Per : DEVENDER SINGH

Brief facts of the case are that the appellants are provider of authorized service station service and had allegedly not paid service tax in respect of amounts collected and accounted as contract charges in respect of paint and body job charges, collected from customers during the period January 2004 to March 2005. A show-cause notice dated 30.1.2006 was issued, which was adjudicated resulting in confirmation of demand of differential service tax amounting to Rs.10,18,922/- along with interest and imposition of various penalties under Finance Act, 1994. The appellant had deposited service tax of Rs.7,49,611/- which was also appropriated by the adjudicating authority. Aggrieved from the order of the adjudicating authority, the appellant went in appeal before the learned Commissioner (A). However, their appeal was rejected. Aggrieved from which the appellant have filed this appeal.

2. Learned advocate for the appellant submits that the appellants were raising invoices under two headings, one for repair charges and another for painting charges and were paying service tax on both repair and painting charges. Contention is that they were also paying works contract tax on painting charges. From 1.1.2004, the appellants started paying service tax on repair charges and work contract tax only on painting charges. The contention is that painting is a composite work which includes both sale of goods and provision of service and there was no mechanism to take the service portion under the Finance

Act, 1994 during the relevant period. It was argued that in view of the judgment of Hon'ble Supreme Court in the case of *CCE, Kerala vs. Larsen and Toubro Ltd.*: *2015 (39) STR 913 (SC)*, service tax cannot be levied for the period prior to 1.6.2007. It was also submitted that sales tax and service tax are not liable to be paid on the sale value. Contention is that they were paying service tax on the activity of repairing vehicles and were paying sales tax i.e., work contracts tax on the painting activity in terms of Sales Tax Act. Since they were paying works contract tax on the entire amount, they were not liable to pay service tax on the service component. In this regard, he relied upon the following judgments:

- *Imagic Creative Pvt. Ltd. vs. CCT: 2008 (9) STR 337 (SC)*
- *Bharat Sanchar Nigam Ltd. vs. UOI: 2006 (2) STR 161 (SC)*

2.1 He also referred to Notification No.12/2003-ST dated 20.6.2003 and submitted that the said Notification includes the value of goods/materials sold during the course of providing taxable service. In this regard, he relied on the judgment of *Samtech Industries vs. CCE, Kanpur: 2015 (38) STR 210 (Tri.-Del.)*, which has been affirmed by Allahabad High Court. He also pleaded that the amount received should be treated as cum-tax. He also pleaded that longer period of limitation was not invokable as the issue involves interpretation of law and the appellant was under *bona fide* belief that the service tax was not liable for the cost incurred on the paints.

3. Learned AR reiterated the submissions in the order of Commissioner (A). He relied on the following judgment of this Tribunal in the case of *Godfrey Phillips India Ltd. vs. CCE Mumbai-I: 2017-TIOL-4488-CESTAT-MUMBAI*.

4. Heard both the sides and perused the record.

5. We find that the appellants have provided authorized service station service which included the repair (body job) and painting of the vehicles. The appellants have not disputed the taxability of the repair service for which the body job charges were received. The dispute is limited to the levy of service tax on the painting activity undertaken by the appellants. The appellants have claimed that the painting service was actually undertaken by their sub-contractors and the paint for the work was supplied by the appellants. The appellants are contesting the levy of service tax on the above work on the contention that they are paying work contract tax to the state government; hence, the same activity cannot be subjected to another tax, namely, service tax. In the impugned order, the Ld. Commissioner (Appeals) has taken the view that mere payment of work contract tax by itself will not lead to exemption from service tax. Further, it is not disputed that the said activity was in the nature of the work

contract. The appellants have relied on the judgment of Hon'ble Supreme Court in the case of *CCE, Kerala vs. Larsen and Toubro Ltd. (supra)* in their support. They have also claimed the benefit of Notification No. 12/2003-ST, though the documentary evidence indicating the value of any goods and materials sold by the service provider is not forthcoming from their contentions. We find that the Ld. Commissioner (Appeals) did not have the benefit of the judgment of Hon'ble Supreme Court in the case of *CCE, Kerala vs. Larsen and Toubro Ltd. (supra)* while analyzing the issues in the impugned order. It would therefore be appropriate to set aside the order and to remand back the matter to the first appellate authority for fresh determination in the light of the judgment of Hon'ble Supreme Court in the case of *CCE, Kerala vs. Larsen and Toubro Ltd. (supra).* Accordingly, we set aside the impugned order and remand the matter to Commissioner (Appeals) for decision afresh in accordance with law and the observations contained in this order. All the issues in the matter are kept open.

6. The appeal is allowed by way of remand in above terms.

*(Order pronounced in Court on **14.08.2018.**)*

S.S GARG
JUDICIAL MEMBER

DEVENDER SINGH
TECHNICAL MEMBER

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