

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

Application(s) Involved:

ST/Additional Evidence/21249/2018 in ST/494/2009-DB

Appeal(s) Involved:

ST/494/2009-DB

[Arising out of Order-in-Original No. 11/2009 dated
25/02/2009 passed by Commissioner of Central Excise,
Customs & Service Tax, Cochin]

M/s. PAULOSE, GEORGE & CO
(NOW PAULOSE, GEORGE CONSTRUCTION
CO (P) LTD)., AISWARYA TOWERS,HOC
JUNCTION, AMBALAMUGHAL
P.O., COCHIN-682302

Appellant(s)

Versus

**Commissioner of Central Excise,
Customs and Service Tax
COCHIN-CCE**
NULL C R BUILDING,
I S PRESS ROAD, ERNAKULAM,
COCHIN, - 682018
KERALA

Respondent(s)

Appearance:

Mr. Kuryan Thomas, Advocate
MENON & PAI
P.B. NO.1911
IS PRESS ROAD,
COCHIN - 682018
KERALA

For the Appellant

Mr. P.Rajan, AR

For the Respondent

Date of Hearing: 14/12/2018

Date of Decision: 14/12/2018

CORAM:

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

Final Order No. 21907 / 2018

Per : P. ANJANI KUMAR

Paulos Geogre Construction Co. Pvt. Ltd., the appellants, are engaged in civil construction works. The appellants were classifying the subject activity as works contract for the purpose of assessment under Kerala VAT. The appellant has been issued a SCN dated 17.01.2008 that the appellants have rendered services "Commercial and Industrial Construction Services" and "site formation and clearance, excavation, earthmoving and demolition service" for the period 10.09.2004 to 31.03.2007 and 16.06.2005 to 31.03.2007 respectively. The Commissioner of Central Excise and Service Tax, Cochin, vide order 11/2009-ST dated 25.02.2009 has confirmed the demand of Rs.42,63,249/- and Rs.35,17,550/- respectively and imposed penalty under Section 78, an amount of Rs.77,80,779/- paid by the appellants was appropriated. Hence, this appeal.

2. Ld. counsel for the appellants submitted in respect of work undertaken by the appellant at Techno Park, Trivandrum, annexure-D certificate issued by Kerala VAT Authority would demonstrate that the same was a work contract. As accepted by

the Commissioner, the work was supply and filling of sand and red earth, construction of two ponds and protection walls for the irrigation canal passing through the premises. Even going by the discussion given by the Commissioner, the service was a composite activity. In respect of other works undertaken by the appellants, he submitted that though the Commissioner has categorized their service as "Commercial or Industrial Construction Service", from the analysis, it is cleared that it was composite works contract involving supply of service as well as transfer of property in goods in the course of execution of the contract. In terms of provisions of Section 65(105)(zzzza) a works contract wherein transfer of property in goods is involved in the execution of contract the same is leviable to tax as sale of goods. He submitted that in view of the decision of Hon'ble Supreme Court in the case of **CCE Vs. Larsen & Toubro Ltd. – TIOL-187-SC-ST**, the taxability of a composite works contract under Finance Act, 1994 could only be under works contract service introduced w.e.f. 01.06.2007. The period involved in this case in both the issues is prior to 01.06.2007 therefore the demands are not sustainable.

3. The Ld. AR for the Department has reiterated the findings of OIO.

4. Heard both sides and perused the records of the case. We find that in respect of the work categorized as "site formation and clearance, excavation, earthmoving and demolition services". The appellants have produced a certification from VAT Authority in Annexure-D and VAT was charged accordingly on the taxable turn over, taxable sales and taxable sales of capital goods. We also find that Ld. Commissioner, while permitting abatement of 67% on the taxable value, observed that in composite contracts where the gross amount charged includes the value of all goods and materials supplied, abatement is applicable. Thus, it is apparent from the findings of the Ld. Commissioner also that he has found that the work undertaken by the appellants is a composite contract. In view of the above, as the works undertaken are composite contracts the ratio of the decision in the case of L&T (supra) is squarely applicable and the demands for the period before 01.06.2007 are not sustainable. Consequentially, penalties are also not sustainable.

5. In view of the above, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the Order was pronounced
in Open Court on **14/12/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Parveen...