

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No. 386 Of 2011**

[Arising out of Order-in-Original No.117/STC/CHD-I/2010 dated 15.12.2010 passed by the Commissioner of Central Excise, Chandigarh-I]

**M/s SAB Industries Limited**

S.C.O No.49-50, Sector-26,  
Madhya Marg-Chandigarh-160019

**: Appellant (s)**

Vs

**The Commissioner of Central Excise  
And Service Tax, Chandigarh-I**

Central Revenue Building, Sector-17C  
Chandigarh-160017

**: Respondent (s)**

APPEARANCE:

Shri Sudeep Singh Bhangoo, Advocate for the Appellant

Shri Narinder Singh, Authorised Representative for the Respondent

**CORAM :**

**HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.60190/2023**

Date of Hearing: 28.04.2023

Date of Decision:12.07.2023

**Per : P.ANJANI KUMAR**

The appellants, M/s SAB Industries Limited, have filed this appeal against the impugned order dated 15<sup>th</sup> December 2010 passed by Commissioner of Central Excise, Chandigarh.

2. Brief facts of the case are that the appellants have carried out Construction works under a Contract with M/s SIDCUL (State Industrial Development Corporation Utrakhand Limited) during the period January 2005 to March 2008. On an Audit conducted on the records of the appellant, it appeared to the Revenue that the

appellants are rendering taxable service under the category of Commercial or Industrial Construction Service classifiable under Section 65 (105) (zzq). A show cause notice dated 08.04.2010 was issued to the appellants seeking to demand Service Tax of Rs.6,23,80,945/- along with interest while seeking to impose penalties under Section 76, 77, 78 of Finance Act, 1994. The said show cause notice was adjudicated by the Commissioner of Central Excise confirming the demand of Rs.50,71,431/- and imposing equal penalty under Section 78 and applicable penalty under Section 77 of the Finance Act, 1994. Learned Adjudicating Authority has extended the benefit of cum-tax value; benefit on account of security advance and the benefit of Notification No.15/2004-ST dated 10.09.2004.

3. Shri Sudeep Singh Bhangoo, learned Counsel appearing on behalf of the appellants submits that the Adjudicating Authority has acknowledged the fact that in terms of the Contract, there is involvement of material in addition to the work carried out and that no material was supplied by M/s SIDCUL. He submits that the Contract entered in to by the applicant with M/s SIDCUL is indivisible Composite Works Contract as material was involved, the fact of which is not disputed by the Revenue. He submits that such contracts are chargeable to duty only with effect from 01.07.2007 as held by the Hon'ble Supreme Court in the case of *CCE and Customs, Kerala Vs Larsen & Tubro Limited-2015 (39) STR 193 (SC)*. He also relies upon:

- *India Guniting Corporation- 2021 (52) GSTL 17 (Tribunal Delhi)*
- *URC Construction Pvt. Limited-2017 (50) STR 147 (Tri. Chennai)*

- *National Building Construction Corporation Limited-2022 (6) GSTL 476 (Tri. Kolkatta)*
- *Voorra Sriram Construction Private Limited- 2020 (35) GSTL 574 (Tri. Chennai)*

4. Learned Counsel further submits that the activity undertaken by the appellant is infrastructure development work as the roads, culverts, bridges, drainage system, storm water drains, water supply etc. which are ultimately meant for the use of public. He submits that commercial or industrial construction applies to work related to factory, industrial unit, shopping/commercial complex etc; he relies on *Alokik Township Corporation- 2015 (37) STR 859 (Tri. Delhi)*. He also submits that as there is no finding of wilful suppression, mis-statement etc. with intent to evade tax, extended period cannot be invoked and equal penalty cannot be imposed; benefit of Section 80 merits to be extended.

5. Shri Narinder Singh appearing on behalf of the Revenue reiterates the findings of the impugned order.

6. Heard both sides and perused the records of the case. On going through the case records and the submissions of the appellants, it is clear that the Contracts entered into by the appellant are not vivisectible between labour and material. Therefore, the case of the appellants is squarely covered by the judgment in the case of *Larsen & Tubro* (supra). The appellants have entered into composite contract with M/s SIDCUL and therefore are works contracts classifiable under Section 65 (105) (zzzza). Therefore, the same are chargeable to service tax from 01.06.2007. Demand for the period January 2005 to

01.06.2007 requires to be set aside. For the period after 01.06.2007, the demand being raised and confirmed under Commercial or Industrial Construction Service cannot also be sustained as the demand was not raised under Works Contract Service. Consequentially, the entire demand goes. As we hold that the entire demand is not sustainable, other submissions of the appellant on the issue of work being in the nature of public utilities and hence not chargeable to service tax; limitation and imposition of penalties are not relevant.

7. In view of the above, the appeal is allowed.

*(Pronounced in the open Court on 12.07.2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

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