CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 50101 of 2014

[Arising out of Order-in-Appeal No. JAL-EXCUS-000-APP-126-127-13-14 dated 23.09.2013passed by the Commissioner (Appeals), Chandigarh]

M/s Parminder Singh Contractor **......Appellant**
130, Anand Nagar-A, Tripuri Town, Patiala, Punjab

VERSUS

Commissioner of Central Excise, Chandigarh-II **......Respondent**
Plot No. 19, Central Revenue Building, Sector 17-C Chandigarh-160017

AND

Service Tax Appeal No. 50102 of 2014

[Arising out of Order-in-Appeal No. JAL-EXCUS-000-APP-126-127-13-14 dated 23.09.2013passed by the Commissioner (Appeals), Chandigarh]

M/s Parminder Singh Contractor **......Appellant**
130, Anand Nagar-A, Tripuri Town, Patiala, Punjab

VERSUS

Commissioner of Central Excise, Chandigarh-II **......Respondent**
Plot No. 19, Central Revenue Building, Sector 17-C Chandigarh-160017

APPEARANCE:

Present for the Appellant: Shri Om Prakash, Advocate

Present for the Respondent: Shri Pawan Kumar, Authorized Representative

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

FINAL ORDER NO. 60458-60459/2024

DATE OF HEARING: 31.07.2024
DATE OF DECISION: 31.07.2024

PER S. S. GARG

These two appeals are directed against the common impugned order dated 23.09.2013 passed by the Commissioner (Appeals) wherein the Commissioner (Appeals) has confirmed the demand of service tax along with interest and also imposed penalties. Since, the issue involved in both the appeals is identical and there is a common impugned order therefore, both the appeals are taken up together for the purpose of discussion and decisions. The details of both the appeals are given here in below:

SCN dated	Period of demand	Amount of Service Tax (Rs.)	Amount of Penalty (Rs.)
23.04.2012	(i) 01.10.2006 to 2007-08. (ii) 2010-11	1,70,116.00	1,70,116.00 u/s 78 + 10,000/- each under Section 77(1) and 77(2) of the Finance Act, 1994 (Act)

05.10.2012	2011-2012	1,36,271.00	68,136 u/s 76 + 10,000/- each under Section 77(1) and 77(2) of the Finance Act, 1994 (Act)

2. Briefly the facts of the present case are that the appellant has provided Construction or Renovation. Commercial/Industrial Buildings/Pipelines/Conduits Services and 'Management, of Maintenance & repair Services as defined under Section 65(105)(zzq) and Section 65(105)(zzg) of the Act, to Punjab Mandi Board, without getting registered under service tax, paying of appropriate Service Tax and filing of statutory service tax return in contravention of Section 67,68 & 69 of the Act read with Rule 4,6 & 7 of the Service Tax Rules, 1994(for brevity' the Rules'). On these allegations two show cause notices dated 23.04.2012 demanding service tax of Rs. 3,78,685/- for the period 01.10.2006 to March 2011 and show cause notice dated 05.10.2012 amounting to Rs.4,55,477/- for the period 2011-12 were issued to the appellant for recovery of service tax under Section 73(1) and 73 respectively. Penalties under Section 76,77,78 and 76 & 77 respectively were also proposed to be imposed. After following the due process, the

Original Authority confirmed the demand of service tax amounting to Rs. 2,06,417/- along with interest, out of proposed amount of Rs. 3,78,685/- by vacating demand in respect of construction of Roads and also by allowing benefit of cum Service Tax. Penalties under Section 77(1) & 77(2) & 78 of the Act were also imposed. Similarly, the adjudicating authority also confirmed the demand of service tax amounting to Rs. 4,12,944/- along with interest out of the proposed demand of Rs. 4,55,477/- by allowing the benefit of cum Service Tax. Penalties under section 76, 77(1) & 77(2) of the Act were also imposed. Aggrieved by both Order-in-Original the appellant filed before the Commissioner (Appeals) and the Commissioner (Appeals) partially allowed the appeals of the appellant and confirmed the service tax amounting to Rs. 1,70,116 in ST/50101 of 2014 and Rs. 1,36,271 in ST/50102/2014. Hence, the present appeal.

3. Heard both the parties and perusal of the material on record.

4. Ld. Counsel for the appellant submits that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial precedents on identical issue. He further submits that the appellant has carried out the Construction of Platforms i.e. Dry Brick Flooring in the Purchase Centers of Market Committees in the State of Punjab. The ordinary bricks are put on the land in the market committees. Some amount of sand is then sprinkled thereon. There is no use of water or cement. The activity of the appellant has not resulted into the construction of a new building or a civil structure or

a part thereof. He further submits that the service provided is not covered under the definition of Commercial or industrial construction as defined under Section 65(105(25b). He further submits that the service was provided with materials which amounts to provision of Works Contract Service as defined under Section 65(105)(zzzz) of the Act. Whereas, the demand has been confirmed under Commercial or Industrial construction service which is legally unsustainable.

4.2 He further submits that prior to 01.06.2007, the Works Contract Service was not taxable. He also submits that this issue is no more *res integra* and has been settled in favour of the assessee in the following decisions:

- *Hon'ble SC decision in Larsen and Toubro Ltd. v. State of Karnataka reported as 2014 (034) STR 0481 (S.C.);*
- *Hon'ble CESTAT Chandigarh Bench Final Order No. 62732/2018 dated 31.08.2018 passed in ST appeal No. E/60611/2017-DB titled M/s Arvindra Electricals Vs. Commissioner, CE & ST, Chandigarh;*
- *Hon'ble CESTAT Chandigarh Bench decision contained in Final Order No. 60078/2024 dated 05.03.2024 passed in Service Tax Appeal No. 3233 of 2012 titled Mehta Construction Company Vs Commissioner of Central Excise Panchkula.*

5. He further submits that the appellant is also eligible for exemption contained in Notification No. 25/2012-ST dated

20.06.2012 on the ground that service having been provided to Market committee which as per Section 18 of the Punjab Agriculture Produce Markets Act, 1961 is a body corporate as well as a local authority. He also submits that the demand is also hit by the bar of limitation under Section 73 of the Act.

6. On the other hand, Ld. AR reiterated the findings of the impugned order.

7. After considering the submissions made by both the parties and perusal of the material on record, we find that the service provided by the appellant falls under the definition of Works Contract Service because the certificate produced by the appellant issued by the Punjab Mandi Board dated 09.04.2013 clearly shows that the allotted work to the appellant was inclusive of cost of material and no material was supplied by the Punjab Mandi Board; therefore, once it is a Works Contract than as per the judgment of the Hon'ble Supreme Court in the case of ***Larsen and Toubro Ltd. v. State of Karnataka reported as 2014 (034) STR 481 (S.C.)***; the appellant is not liable to pay service tax under Commercial or Industrial Construction Service even prior to 01.06.2007 or after that date also. This issue has been considered by the Chandigarh Bench in the case of ***Mehta Construction Company Vs Commissioner of Central Excise Panchkula*** vide ***Final Order No. 60078/2024*** dated ***05.03.2024***, wherein, this Tribunal has held in Para 6 as under:

> *6. Heard both sides and perused the records of the case. Regarding the demand in respect of "Commercial or Industrial Construction Service", we find that the issue is settled in favour of the appellants vide Final Order No.60009-60011/2024 dated 08.01.2024 by this very Bench relying on the Hon'ble Apex Court judgment in the case of M/s Larsen & Tubro 2015 (39) STR 913 (SC). In respect of demand on "Supply of Tangible Goods Service", we find that neither the show cause notice nor the impugned order records any proof of the possession and effective control of the machinery, supplied by the appellants to M/s L&T, was with the appellant themselves. In the absence of such evidence, demand can be sustained only on the basis of averment on the part of the appellant that they have also supplied the operators of the machinery. It is not coming forth in the impugned order as to whether the appellant was paying the wages to the operators and were having effective control of the goods supplied by them. In the absence of the same, demand cannot be sustained.*

8. Further, the Tribunal in the case ***of Arvindra Electricals Vs. Commissioner of Central Excise & ST, Chandigarh*** vide ***Final Order No. 62732/2018*** dated ***31.08.20218*** has held in para 5 as under:

> *"5. Heard the parties and considered the submissions. On careful consideration of the submissions made by both sides, we find that in this case, demand is sought to be confirmed under the category of 'Erection, Commissioning and Installation Services'. It is fact on record that the appellant has provided the services in question along with material. Therefore, the classification of the services is Works Contract as per the decision of Hon'ble Apex Court in the case of Larsen & Toubro*

(supra) wherein the Hon'ble Apex Court held that any service provided along with material falls under the category of Works Contract, therefore, prior to 01.07.2012, the service tax liability is not sustainable against the appellant under the category of 'Erection, Commissioning and Installation Services'. For the period post 01.07.2012, in terms of exemption Notification No. 25/2012-ST dated 20.06.2012, the services provided to government organizations or a local authority, by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of civil structure or any other original works meant predominantly for use other than for commerce, industry or any other business or profession was exempt from payment of duty. Admittedly, the appellant is providing the said services to government organisation namely M/s. Uttar Haryana Bijli Vitran Nigam, Shri Guru Granth Sahib World University, M/s. Greater Mohali Area Development Authority, M/s. Punjab Small Scale Industries & Export Corporation Limited are not engaged in any commerce, Industry or any other business or profession. In that circumstance, in terms of Notification No. 25/2012-ST dated 20.06.2012, the services provided to these organizations under contracts mentioned at Serial No 1 to 12 (except serial No. 2 and 3) are exempted from payment of duty.

With regard to services provided to Guru Granth Sahib University and M/s. HP Singh and others, we find that work was completed before the negative list regime and the service has been provided by the appellant along with goods. In that circumstance, in the light of the decision of Hon'ble Apex Court in the case of Larsen & Toubro (supra), merit classification of the said services under Works Contract, therefore, demand of service tax is not sustainable under 'Erection, Commissioning and Installation Services'."

9. As regards the limitation, we find that there is no specific allegation against the appellant that they have not paid the service tax with intend to evade payment of service tax. In fact, the appellant were providing services to organizations which are not engaged in any commerce, industry or any other business or profession; therefore, we hold that the extended period of limitation is not invokable.

10. In view of our above discussion and by following the ratio of the above said decisions, we are of the considered opinion that the impugned order is not sustainable in law and the same is set aside by allowing the appeals of the appellant with consequential relief, if any, as per law.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash