CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 54455 of 2014

[Arising out of Order-in-Appeal No. JAL-EXCUS-000-APP-027-014-15 dated 08.05.2014 passed by the Commissioner (Appeals), Central Excise and Service Tax, Chandigarh-II]

Anil Kumar Garg **......Appellant**
C/o R K Tripathi, 40/41 Old Dalanwala,
Dehradun, Uttrakhand 248001

VERSUS

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

APPEARANCE:

Shri Veer Singh, Advocate for the Appellant

Shri Raman Mittal, Authorized Representatives for the Respondent

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

FINAL ORDER NO. 60643/2024

DATE OF HEARING: 05.12.2024
DATE OF DECISION: 05.12.2024

S. S. GARG:

The present appeal is directed against the impugned order dated 08.05.2014 passed by the Commissioner (Appeals), whereby the learned Commissioner (Appeals) has confirmed the demand of Service Tax of Rs. 2,59,814/- after giving the benefit of abatement of 67% under Notification No. 1/2006-ST dated 01.03.2006 along with interest under Section 75 of the Act; and has confirmed the penalty of Rs.1000/- under Section 77 of the Act and an equivalent penalty of Rs.2,59,814/- under Section 78 of the Act.

2.1 Briefly stated facts of the present case are that the appellant is engaged in providing taxable services of 'Works Contract' and 'Rent a Cab Operator' to M/s Nestle India Pvt Ltd from time to time. On the basis of the information provided by M/s Nestle India Pvt Ltd, the department issue a show cause notice to the appellant on 03.04.2008 alleging that the appellant is liable to pay Service Tax amounting to Rs.6,86,100/- under Section 68 of the Finance Act, 1994 by invoking the extended period of limitation under proviso to Section 73 of the Finance Act, 1994 along with interest under Section 75 of the Act and penalties under Sections 76, 77 & 78 of the Act were also proposed in the show cause notice.

2.2 As per the appellant the show cause notice was never served upon the appellant and the Adjudicating Authority confirmed the demand by passing an *ex-parte* order on 09.01.2009. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals), who has given the benefit of abatement of 67% under Notification No. 1/2006-ST dated 01.03.2006. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4.1 The learned Counsel for the appellant submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law.

4.2 The learned Counsel further submits that the impugned order is contrary to law laid down by the Hon'ble Apex Court in the case of **CCE vs. Larsen & Toubro Ltd – 2015-TIOL-187-SC**. He further submits that in the present case, the respondent-Revenue has confirmed the demand of Service Tax under the taxable head of 'Construction Services', whereas 'Construction Services' provided by the appellant are in the nature of composite services involving supply of material and the composite contract was not vivisectable. He further submits that it has been admitted in the Order-in-Original as well as in the impugned order that the services rendered by the appellant are in the nature of 'Works Contract'.

4.3 The learned Counsel further submits that the appellant had been regularly filing the VAT Returns for the relevant period which has been admitted in Order-in-Original also, which further shows that the services rendered by the appellant were in the nature of 'Works Contract', whereas the demand has been confirmed by the Adjudicating Authority under 'Construction Services'. He further submits that the learned Commissioner (Appeals) while confirming the demand, allowed the abatement of 67% under Notification No. 1/2006-ST dated 01.03.2006 and ordered that the value of taxable service shall be limited to 33% of the gross amount charged. He further submits that finding of the Commissioner (Appeals) giving the abatement of 67%, has not been challenged by the department which clearly shows that the services rendered by the appellant were composite in nature involving service as well as material.

4.4 The learned Counsel further submits that the issue regarding taxability of composite contract prior to 01.06.2007 has been decided by the Hon'ble Apex Court in the case of **CCE vs. Larsen & Toubro Ltd** (supra), wherein the Hon'ble Apex Court has held that composite contracts were not taxable under Service Tax prior to 01.06.2007. He also submits that similar issue has decided by this Hon'ble Tribunal in the favour of the assessee vide **Final Order Nos. 60603-60604/2023** in the case of **M/s Krishnan & Company vs. CCE – Appeal Nos. ST/59812-59813/2013**.

4.5 The learned Counsel further submits that demand of service tax on rent-a-cab service is also not sustainable because the said service was not taxable prior to 01.06.2007 either under 'Rent-a-cab Service' or under 'Tour Operator Service' as held by the Mumbai Bench of the Tribunal in the case of **Rahul Travels vs. CCE, Nagpur – 2017 (47) STR 332 (Tri. Mumbai)**.

4.6 He further submits that the impugned order is wholly barred by limitation as the demand pertains to the period 2003-04 and 2005-06, whereas the show cause notice was issued on 03.04.2008 and the department has failed to produce anything on record to show that there is a suppression on the part of the appellant with intent to evade payment of tax.

5. On the other hand, the learned AR for the Revenue reiterates the findings of the impugned order.

6. After considering the submissions made by both the parties and perusal of the material on record, we find that the period involved in the present appeal is 2003-04 and 2005-06 and the service tax liability has been confirmed under 'Construction Services' whereas both the authorities have admitted that it was 'Works Contract' service which involves construction activity and supply of material, thus, making the contracts as composite contract.

7. Further, we find that this issue has been settled by the Hon'ble Apex Court in the case of **CCE vs. Larsen & Toubro Ltd** (supra), wherein it has been categorically held by the Hon'ble Apex Court that composite contracts were not taxable under Service Tax prior to 01.06.2007.

8. Further, as regards the issue of demand of service tax under 'Rent-a-cab service' is concerned, we find that the decision of Mumbai Bench of the Tribunal in the case of **Rahul Travels vs. CCE, Nagpur** (supra) is squarely applicable in the present case and the appellant is not liable to pay service tax under 'Rent-a-cab Service' or under 'Tour Operator Service' because the same was not taxable prior to 01.06.2007.

9. Further, we find that the entire demand in the present case is barred by limitation because the period of dispute is 2003-04 and 2005-06 whereas the show cause notice was issued on 03.04.2008,

which is wholly time barred and the department has not brought any evidence on record to establish suppression on the part of the appellant with intent to evade payment of tax.

10. In view of our discussion above and by following the ratios of the above said decisions on identical issues, we are of the considered opinion that the impugned order is not sustainable in law and is liable to be set aside and we do so by allowing the appeal 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)

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