CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

Service Tax Appeal No. 50910 of 2014

[Arising out of Order-in-Original No. 73/ST/CHD-II/2013 dated 05.11.2013 passed by the Commissioner of Central Excise and Service Tax-Chandigarh-II]

M/s S S Constructions **......Appellant**
Sco- 375, 2nd Floor, Sector-37-d
Chandigarh

VERSUS

C.C.E. & S.T., Chandigarh-II **......Respondent**
Central Excise House, F-Block,
Rishi Nagar, Ludhiana-141001

APPEARANCE:

Present for the Appellant: Ms. Krati Singh, Advocate

Present for the Respondent: Ms. Shivani, Authorized Representative

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

HON'BLE MR. P.VENKATA SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 60963 /2021

DATE OF HEARING: 30.11.2021
DATE OF DECISION: 10.12.2021

PER: SULEKHA BEEVI C.S.

The appellants are engaged in providing construction services and are registered with the department for payment of service tax on various taxable services. During the course of audit it was noticed that they had not discharged service tax on the consideration received by them for the construction services rendered to M/s Balaji Medical and Diagnostic Research Centre, New Delhi. Show Cause

Notice dated 02.03.2012 was issued to the appellant proposing to demand the Service Tax for the period 2008-09 to 2010-11 alongwith interest and also for imposing penalty. After due process of law the original authority confirmed the demand, interest and imposed penalties. Aggrieved by such order, the appellants are now before the Tribunal.

2. The learned Counsel Ms. Krati Singh appeared and argued for the appellant. She submitted that the appellant was awarded a contract for construction of a hospital building for Balaji Medical and Diagnostic Research Centre in New Delhi. The Appellant had not discharged the service tax for the reason that the said building was not constructed for commercial purpose. Further, the demand is raised in show-cause notice under Commercial or Industrial Construction Services whereas, the construction services provided by the appellant included both goods and materials; being composite contracts, the demand under Commercial or Industrial Construction Services cannot sustain. The service provided being in the nature of works contract service as it includes the supply of material as well as rendering of services, the demand confirmed under Commercial or Industrial Construction Services is against the provisions of law. She adverted to the show-cause notice to argue that the tax demand proposed in the show-cause notice is after considering 67% abatement in terms of notification 1/2006 dated 01.03.2006. This would make it clear that the construction services rendered by the appellant is in the nature or composite contract involving both supply of materials and rendering service. Though, the appellant has

rendered works contract services, the demand is raised under Commercial or Industrial Construction Services for the period after 01.06.2007.

3. She relied upon the decision of the Tribunal in the case of India Guniting Corporation vs. Commr. Of Central Tax, 2021 (52) G.S.T.L. 174(Tri.-Del.) as well as the decision in the case of Real Value Promoters Ltd. vs. CGST, 2018-TIOL-2867-CESTAT-MAD to argue that the demand raised under Commercial or Industrial Construction Services for the period after 1.6.2007 on composite contracts cannot sustain.

4. The Learned Authorised Representative Ms. Shivani supported the findings in the impugned order.

5. Heard both sides and perused the records.

6. The main contention put forward by the learned Counsel for the appellant is that the demand made under Commercial or Industrial Construction Services for the period 2008-09 to 2010-11 cannot sustain as the construction services rendered by the appellant are involving both supply of material as well as rendering of service. The said issue whether demand under the category of Commercial or Industrial Construction Services can sustain for construction services on composite contract involving both supply of material and rendering of service was analysed by the Tribunal in the case of India Guniting Corporation vs. Commr. Of Central Tax, 2021 (52) G.S.T.L. 174(Tri.-Del.). The Tribunal observed as under:-

20. In *M/s. Choudhary Stone Crushing Company v. Commissioner of Central Excise and Service Tax, Jaipur-II* [2019(3) TI 38-CESTAT, New Delhi], the Tribunal observed as under:-

> "8. For period commencing on 1-6-2007, the composite services would be liable for classification under Works Contract Service only. But we note that Show Cause Notice has proposed the demand for service tax under the category of Commercial and Industrial Construction Service as well as Repair and Maintenance Service. Hence we are of the view that the confirmation of demand under the category of WCS will not be proper particularly in view of the decision of the Tribunal in case of Ashish Ramesh Dasarwar (supra) wherein Tribunal has taken the view that demand for Service Tax is to b set aside if the Show Cause Notice proposed a classification different from WCS for construction activity."

21. A Division Bench of the Tribunal in *M/s. Gurjar Construction as Commissioner of Central Excie, Jaipur II* [2019 (5) TMI 717 – CESTAT, New Delhi] also examined such a position and observed that a demand made under a particular category cannot be sustained under a different category.

22. In view of the aforesaid decisions of the Tribunal, it has to be held that the Commissioner was not justified in confirming the demand of service tax under the category of "works contract" for the period post-JUNE 1, 2007 even if the levy of service tax was not exempted under Notifications, since, the show cause notice that demand it service tax under the three categories namely (i) commercial or industrial construction,(ii) construction of complex, and (iii) management, maintenance or repair.

23. The order dated January 31, 2018 passed by the Commissioner that has confirmed the demand of service tax, therefore, deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

7. In the case of Real Value Promoters vs. CGST, 2018-TIOL-2867-CESTAT-MAD similar issue was analysed wherein the Tribunal held that after 01.06.2007 for services rendered in the nature of composite indivisible contracts, the levy of service tax has to be under Works Contract Service under Section 65 (105) (zzzza). The Tribunal in the case of Real Value Promoters (Supra) discussed as under:-

In the light of the discussions, findings and conclusions above and in particular, relying on the ratios of the case cited supra, we hold as under:-

a. The services provided by the appellant in respect of the projects executed by them for the period prior to 1.6.2007 being in the nature of composite works contract cannot be brought within the fold of commercial or industrial construction service or construction of complex service in the light of the Hon'ble Supreme Court judgment in Larsen & Toubro (supra) upto 1.6.2007
b. For the period after 1.6.2007, service tax liability under category of 'commercial or industrial construction service' under Section 65(105)(zzzh) ibid, 'Construction of Complex Service' under Section 65(105)(zzzq) will continue to be attracted only if the activities are in the nature of services' simpliciter.
c. For activities of construction of new building or civil structure o new residential complex etc. involving indivisible composite contract, such services will require to be exigible to service tax liabilities under 'Works Contract Service' as defined under section f65(105)(zzza) ibid.
d. The show cause notices in all these cases prior to 1.6.2007 and subsequent to that date for the periods in dispute, proposing service tax liability on the impugned services involving composite works contract, under 'Commercial or Industrial Construction Service' or 'Construction of Complex' Service, cannot therefore sustain. In respect of any contract which is a composite contract, service tax cannot be demanded under CICS / CCS for the periods also after 1.6.2007 for the periods in dispute in these appeals. For this very reason, the proceedings in all these appeals cannot sustain.

[Emphasis supplied]

8. The above decisions hold that the demand of service tax under Commercial or Industrial Construction Services cannot sustain for contracts which are composite in nature and involve both supply of material and rendering of service. Accordingly, we hold that the demand cannot sustain on merits.

9. The Learned Counsel has put forward arguments on limitation also. It is submitted by her that the show-cause notice was issued on 02.03.2012 for the period 2008-09 to 2010-11. The department has not put forward any evidence to establish any positive act of willful suppression or mis-statement against the appellant. Further, the issue is interpretational in nature, and was under litigation during the

disputed period. The question as to whether service tax is leviable on Work Contract Services was under litigation and travelled up to Supreme Court which was settled by the decision rendered in CCE & C vs. Larsen & Toubro Ltd., 2015(39) S.T.R. 9013(S.C.). For these reasons, we find that the appellant has made out a case on the ground of limitation also.

10. From the foregoing, we hold that the demand of service tax cannot sustain. The impugned order is set aside. The appeal is allowed with consequential relief, if any.

(Pronounced in the open court on 10.12.2021)

SULEKHA BEEVI C.S.
MEMBER (JUDICIAL)

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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