CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
CHENNAI

Appeal No.ST/120/2012

[Arising out of Order-in-Appeal No.127/2011 dt.21.11.2011 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli]

V.Chinnasamy Appellant

Versus

Commissioner of Central Excise, Trichy Respondent

Appeal No.ST/126/2012

[Arising out of Order-in-Appeal No.128/2011 dt.24.11.2011 passed by the Commissioner of Customs & Central Excise (Appeals), Trichirapalli]

A.Elango Appellant

Versus

Commissioner of Central Excise, Trichy Respondent

Appeal No.ST/121/2012

[Arising out of Order-in-Appeal No.129/2011 dt.24.11.2011 passed by the Commissioner of Customs & Central Excise (Appeals), Tiruchirapalli]

Vee Vee Constructions Appellant

Versus

Commissioner of Central Excise,Trichy Respondent

Appearance:

Shri G.Natarajan, Advocate
For the Appellant

Shri K.P.Muralidharan, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 10.5.2018

Per Bench

FINAL ORDER No. 41460-41462/2018

The issue involved in all these appeals being the same, they were heard together and are disposed by this common order.

1. Brief facts are that appellants undertook various construction works mainly for customers like BSNL, LIC, All India Radio and Works of erection of cell phone towers etc for BSNL. The department was of the view that appellants are liable to pay service tax under "Commercial or Industrial Construction Service" upto the period 31.5.2007 and in respect of the very same activities, they are liable to pay service tax under Works Contract Services with effect from 1.6.2007. In ST/126/2012 apart from this there was non payment of service tax on cleaning services also. Show Cause Notices were issued to appellants and after due process of law, the authorities below confirmed the demand of service tax in each cases, alongwith interest and penalties. The details of demand are as shown below :-

S.No.	**Appeal No., Appellant & Period Involved**	**Service Tax Demand confirmed**		
		CICS (Upto 31.05.07)	WCS (From 01.06.07)	Cleaning Service
1	ST/120/2012 – V.Chinnasamy (Oct 04 to Mar 09)	1,51,953/-	4,35,869/-	
2	ST/121/2012 – VeeVee Constructions (Oct 04 to Mar 09)	8,04,746/-	1,03,956/-	NIL
3	ST/126/2012 – A.Elango (Oct 04 to Mar 09)	1,38,356/-	6,66,002/-	44,094/-

Aggrieved, the appellants are now before the Tribunal.

2. On behalf of appellant, the Ld.Counsel, Sh.G.Natarajan, submitted that, the contracts being composite in nature, the appellants are not liable to pay service tax for the period prior to 1.6.2007 as laid in the judgement of Hon'ble Supreme Court in the case of ***Larsen & Toubro 2015 (39) STR 913 (S.C.)***. The Ld.Counsel argued that for the period after 1.6.2007, the demand is time barred upto September 2008. The show cause notice has been issued on 21/4/2010 invoking extended period. The non-payment of service tax was due to the bonafide belief that the services were mainly provided only to Public Sector Units and other government agencies such as BSNL, LIC, All India Radio etc and therefore not subject to levy of service tax. The Government agencies who awarded contracts to the appellants were also of the same view and refused to bear the burden of service tax. Since the services were provided to Public Sector Units, the allegation that appellants suppressed facts is without basis.

3. On behalf of department, the Ld.AR, Sh.K.P.Muralidharan, supported the findings in the impugned order. The demand has been confirmed after granting abatement of 67% as per Notification 1/2006. The appellants are liable to pay the service tax as confirmed applying the composition scheme.

4. Heard both sides.

5. The period of dispute is from October 2004 to March 2009. The contracts being composite in nature, the demand prior to 1.6.2007 cannot sustain as laid in the decision of Apex Court in Larsen & Toubro (supra) and therefore requires to be set aside which we hereby do.

5.1 The demand with effect from 1/6/2007 is contested by the appellant only on the ground of limitation. Therefore on merits the appellants are liable to pay service tax under Works Contract Service for the period after 1/6/2007. The Ld.Counsel has submitted that the appellants have undertaken the construction works for Public Sector Units and Government agencies. For such works orders / contracts, payments are made by cheques and Bank transactions. It is argued that BSNL and others informed the appellants that no service tax is applicable to them being governmental agencies. Department has not adduced any evidence to establish that appellants had wilfully suppressed facts with intent to evade payment of tax. They had co-operated with department and furnished all details from which the demand has been quantified. Taking these aspects into consideration, we are of the view that the demand invoking the extended period cannot sustain and requires to be set aside, which we hereby do. It is made clear that appellant is liable to pay the service tax for the normal period. However, for the same reasons, the penalty in respect of the normal period is set aside.

5.2 A demand of Rs.44,094/- is confirmed in ST/126/2002 for cleaning services. The Ld.Counsel has been fair enough to concede that appellant is liable to pay this amount and that on merits the appellant is not contesting the same. He pleaded to set aside the penalty. We therefore hold that the demand in respect of cleaning services are sustained and the penalty on this amount is set aside for the very same reasons stated in preceding paras.

5.3 In the result, the impugned orders are modified to the extent of (i) setting aside the demand prior to 1/6/2007 on merits (ii) the demand after 1/6/2007 is set aside on limitation; (iii) the demand for normal period is sustained (iv) demand on cleaning services is sustained (v) All penalties except that imposed under Section 77 are set aside. Appeals disposed as above with consequential reliefs, if any.

(Operative part of the order pronounced in open court)

(Madhu Mohan Damodhar) **Member (Technical)**	**(Sulekha Beevi C.S)** **Member (Judicial)**

vsr