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

ST/MISC/41832/2017 & ST/111/2011

(Arising out of Order-in-Original No. 52/2010 dated 29.10.2010 passed by the Commissioner of Service Tax, Chennai).

Logos Construction Pvt. Ltd : Appellant

Vs.

CCE & ST, Chennai : Respondent
(Presently known as CGST & Central Excise,
Chennai South Commissionerate)

Appearance

Shri J. Shankarraman, Advocate
for the appellant

Shri K.Veerabhadra Reddy, JC (AR)
for the Respondent.

CORAM:

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing/Decision: **20.06.2018**

FINAL ORDER No. **41873/2018**

Per: Madhu Mohan Damodhar

The facts of the case are that the appellants are involved in construction activities. Pursuant to investigation conducted by the department, it appeared that the appellants had not paid the service tax liability in respect of the such services rendered.

Accordingly, a SCN dated 09.04.2009 was issued to them, interalia proposing demand of tax liability under various categories for various periods as under:-

i) For the period 10.09.2004 to 16.06.2005, under Construction services, and the period 16.06.2005 to 30.09.2008 under Commercial or Industrial construction Services (CICS); the total demand proposed for these two periods being Rs.3,88,78,213/- with interest thereon.

ii) For the period 01.04.2008 to 30.09.2008, under Works Contract; demand proposed for this period being Rs.26,88,611/-.

In adjudication, vide the impugned order dated 29.10.2010, the adjudicating authority confirmed an amount of Rs.4,07,86,869/- and interest thereon and also imposed penalties of Rs. 6,00,00,000/- under Section 78 of the Act and Rs. 2000/- under Section 77 ibid.

2. Today when the matter came up for hearing, for the appelants, the Ld. Counse, Shri V. Shankarraman made the following submissions:-

a) In view of the Hon'ble Supreme Court judgment in the case of *CCE Vs. Larsen & Toubro Ltd.* – 2015 (39) STR 913 (SC), the activities of the appellant were only execution of works contract, there cannot be any tax liability till 01.06.2007.

b) For the period 01.06.2007 to 30.09.2008, the demand under construction services and CICS cannot sustain since these services were only in the nature of works contract and the demand was made only under that category.

c) In respect of the demand of Rs. 26,88,611/- under Works Contract service for the period 01.04.2008 to 30.09.2008, they have already paid up around Rs. 82 lakhs under works contract category. Hence, the demand is required to be treated as having already been discharged.

d) Although they have taken due registration on 15.02.2008 under CICS, they had subsequently informed the department vide its letter dated 21.04.2008 that their activities would fall under the category of works contract only. Ld. Counsel also takes us to paragraph-5 of the SCN to point out that based on the application the service of "Works Contract" was also included in the registration certificate on 11.04.2008. The Ld. Counsel pleaded that in view of these on-going communication with the department and also considering that the tax liability should be considered as discharged, the penalty imposed on the appellant may be set aside.

3. On the other hand, for Revenue Ld. AR Shri K. Veerabhadra Reddy, JC, supports the impugned order. He submits that appellant had been collecting service tax under works contract category itself even prior to 01.04.2008, hence the penalty imposed on the appellant is very much sustainable.

4. Heard both sides and have gone through the facts.

5.1 The payment upto 01.06.2007 will get extinguished on account of the law that has been laid down by the Apex Court in the case of Larsen & Toubro Ltd., (supra), relied upon by the Ld. Counsel. So ordered.

5.2 The Ld. Counsel has been at pains to point out that on-going projects which were only in the nature of works contract prior to 01.04.2007 cannot be brought under different category of “Construction Services and CICS” subsequently. We find merit in his arguments. The SCN has proposed demand of service tax liability only under these two categories and not under Works Contract service. The demand confirmed in the impugned order under these categories namely under construction service for the period 10.09.2004 to 16.06.2005 under CICS for the period 16.06.2005 to 30.09.2008 cannot also sustain and are therefore set aside. So ordered

5.3 For the period 01.04.2008 to 30.09.2008, the demand confirmed is Rs. 26,88,611/-. We note that the appellant has not contested the liability under works contract for this period. The only argument brought forth by the Ld. Counsel is that they have discharged an amount of around Rs. 82 lakhs under this category after the visit of the departmental officers and therefore an amount of Rs. 36,88,611/- demanded in the impugned order should be considered as having been discharged. We find merit in his argument and hence the demand of Rs. 26,88,611/- under works contract service for the period 01.04.2008 to 30.09.2008 is required to be considered as having been paid, albeit subsequent to the visit of the officers. However, the interest liability if any that arise on this amount if not paid already will have to be discharged by the appellants. So ordered.

5.4 With regard to the penalties, the penal provisions will have a bearing only in respect of the demand for the period 01.04.2008 to 30.09.2008 under works contract service. The appellants have sent number of letters to the department on this issue. It is also only on 1.04.2008, that the registration certificate had been amended to include works contract service as per the request of the appellant. This being so, and also considering the fact that the issue per se was also mired in litigation and reached finality only after the Hon'ble Apex Court judgement in L& T (supra)., we are of the firm opinion that there cannot be any penalty imposed in the impugned order and therefore set aside the same.

6. The miscellaneous application seeking change of cause-title of the respondent is filed by the department due to change in jurisdiction and address of the respondent. The present jurisdiction and address of the respondent is as follows:-

The Commissioner of GST & Central Excise,
Chennai South Commissionerate,
MHU Complex, 692, Anna Salai,
Nandanam, Chennai – 600 035.

Accordingly, the miscellaneous application is allowed and the jurisdiction and address of the respondent is changed from CCE & ST, Chennai-to The Commissioner of GST & Central Excise, Chennai South Commissionerate.

7. Appeal disposed of in above terms. The miscellaneous application for change of cause title also stands disposed of.

(Order dictated and pronounced in the open Court)

(P. DINESHA) MEMBER (JUDICIAL)	(MADHU MOHAN DAMODHAR) MEMBER (TECHNICAL)

BB