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

ST/00506/2011

[arising out of Order-in-Appeal No.124/2011 (P-ST), dated 15.06.2011 passed by the Commissioner of Central Excise (Appeals), Chennai]

M/s. CHEMIN CONTROLS AND INSTRUMENTATION (P) LTD. — APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, PUDUCHERRY — RESPONDENT

Appearance:

For the Appellant	Shri S. Muthuvenkataraman, Ms. Cynduja Crishnan, Adv/s.
For the Respondent	Shri B. Balamurugan, AC (AR)

CORAM:

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

Date of hearing/decision **27-09-2018**

FINAL ORDER NO. **42533 / 2018**

Per Bench:

The appellants are engaged in providing Erection, Commissioning or Installation Services, Works Contract etc., and are registered with the service tax department. During the course of verification of records, it was found that the appellants had showed an amount of Rs.2,50,04,313/- under the caption Erection, Commissioning and Testing for which service tax was not paid. On enquiry the assessee had replied that these were amounts received from the projects executed for M/s. BHEL and that they were informed that M/s. BHEL would be paying the service tax. The department after scrutiny of invoices and upon reconciliation with the balance sheet etc., was of the view that the appellants are liable to discharge service tax even if they were a sub-contractor of M/s. BHEL. Show-cause notice was issued proposing to demand service tax from appellants under Erection, Commissioning or Installation Services for the period 2004-05 to 2007-08. After due process of law, the original authority confirmed demand of Rs.46,45,246/- along with interest and imposed equal penalties. Aggrieved, the appellants are now before the Tribunal.

2. The learned counsel Shri S. Muthuvenkataraman and Ms. Cynduja Crishnan appeared and argued on behalf of the appellants. It was submitted that in certain cases, the appellants had provided services under specific contract, which was composite in nature involving supply of materials as well as service element. They had thus discharged service tax under Works Contract Services, which came into effect from 01.06.2007. Being composite services, the demand raised for the period prior to 01.06.2007 is not taxable, as per decisions laid in the case of *M/s. Larsen & Touboro Ltd.,* reported in *2015 (39) S.T.R. 913 (S.C.)*. It was also argued by him that the services related to the contracts were performed by them as sub-contractor and that during the period in question they were under the *bonafide* belief that sub-contractors were not liable to pay service tax

as there were various clarifications issued by Government to this effect. Since M/s. BHEL had discharged the service tax, they are not liable to pay service tax for the very same activity. He submitted that the appellants have produced certificate issued by M/s. BHEL to establish that the service tax on behalf of the sub-contractors have already been discharged by M/s. BHEL. To support this argument, he relied upon the decision in the case of *M/s. Power Mech Projects Ltd., Vs Commissioner of Customs, Guntur* reported in *2017 (48) S.T.R. 165 (Tri.-Hyd.)*.

2.1 It is submitted that for certain contracts the appellants have discharged tax under WCS after 01.06.2007 and the same was intimated to the department vide communication dated 23.10.2008. Thus, the entire demand made under Erection, Commissioning and Installation Service would fail in view of the decision of the Supreme Court in *M/s. Larsen & Toubro* reported in *2015 (39) S.T.R. 913 (S.C.)* and the Hon'ble Tribunal's decision in *M/s. Real Value promoters Vs Commissioner of Central Excise* in Final Order No.42436-42438/2018 dated 18.09.2018.

2.2 Without prejudice, the appellants submit that the projects herein are for distribution and transmission of electricity and thereby the impugned services are exempted from payment of service tax in view of Notification No 45/2010 dated 26.02.2010. In this regard reliance is placed on the decision in *CCE&ST, Hyderabad Vs M/s. Sri Rajyalakshmi Cement Products* reported in *2017 (52) STR 309 (Tri-Hyd.)*.

3. The learned Authorised Representative Shri B. Balamurugan supported the findings in the impugned order. He submitted that the

main argument raised by the appellants at the time of hearing is that the contracts are composite in nature and, therefore, the demand under Erection, Commissioning and Installation Services cannot sustain as per decisions of the Tribunal in the case of *M/s. Real Value promoters* (supra). However, from the show-cause notice or in the impugned order, there is no discussion as to whether these contracts are pure service contracts or composite contracts involving both materials and services. The only issue that is discussed in the adjudication order is whether the appellants can be absolved from the liability to pay service tax, being a sub-contractor, for the reason that the main contractor has discharged the service tax. With regard to the ground raised for claiming exemption under Notification No.45/2010, he submitted that the projects are not for distribution or transmission of electricity and hence not applicable.

4. Heard both sides.

5. The main ground put forward by the appellants is that the contracts being in the nature of composite contracts, involving both supply of materials and rendering of services, the demand of service tax under Erection, Commissioning and Installation Service [ECIS] will not sustain for the period after 01.06.2007 as per the decision of the Tribunal in the case of *M/s. Real Value promoters* (supra) and that demand prior to 01.06.2007 will not sustain as per decision in *M/s. Larsen & Touboro* (supra). On perusal of the show-cause notice as well as the impugned order, we have to agree with the submission of the learned Authorised Representative that there is no clarity as to whether contracts are composite contracts. Though such contracts are for setting up of power projects and is most likely to be involving

supply of materials as well as service element, in our view, this fact needs to be verified. The appellants have discharged service tax after 01.06.2007 under Works Contract Service. The demand of service tax under ECIS cannot sustain after 01.06.2007, if the contracts are of composite nature as laid down by the Tribunal in its decision in M/s. *Real Value promoters* (supra). In respect of the demand prior to 01.06.2007, the Hon'ble Apex court in the case of *M/s. Larsen & Touboro* has held that the demand for Works Contract Service, which are composite in nature cannot sustain prior to 01.06.2007. This aspect also requires to be looked into.

6. The appellants have also contended that being power projects, no service tax is payable by them in view of the Notification No.45/2010, dated 26.02.2010 and also the decision in the case of M/s. *Sri Rajyalakshmi Cement Products* (supra). The adjudicating authority having not considered the plea, we are of the view that this plea also has to be looked into.

7. The appellants have produced certificate issue by M/s. BHEL to support their contention that service tax on the said activities has been discharged by M/s. BHEL, who are the main contractors. This aspect has not been considered by the authorities below.

8. We are, therefore, of the considered opinion that the matter requires to be remanded to the adjudicating authority, who is directed to look into the facts whether the contracts for the disputed period are composite contracts and whether the decision in the case of M/s. *Real Value promoters* (supra) and the decision in the case of *M/s. Larsen & Touboro* (supra) would apply. The adjudicating authority shall also consider the other pleas put forward by the appellants with regard to

Notification No.45/2010 and the certificate issued by M/s. BHEL stating that they have discharged the service tax for these contracts.

8. From the discussions made above, the impugned order is set aside, the matters are remanded to the adjudicating authority, who shall consider the matter afresh as per the directions made above.

(Operative part of the order pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

ksr
05-10-2018

	DRAFT			Remarks
	I	II	III	
Date of dictation	27.09.2018			
Draft Order - Date of typing	01.10.2018			
Fair Order Typing	05.10.2018			
Date of number and date of dispatch	.10.2018			