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

Appeal No.: ST/00188/2010

(Arising out of Order-in-Appeal No. 172/2009 (MST) dated 31.12.2009 passed by the Commissioner of Central Excise (Appeals), Chennai)

The Commissioner of G.S.T. & Central Excise, : Appellant
Chennai North Commissionerate

Versus

M/s. Kirloskar Construction & Engineers Ltd., : Respondent
(Formerly M/s. Aban Construction (P) Ltd.),
Janpriya Crest, 113, Pantheon Road, Egmore,
Chennai – 600 008

Appearance:-
Shri. K. Veerabhadra Reddy, ADC (AR)
for the Appellant
Shri. M. Karthikeyan, Advocate
for the Respondent

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

Date of Hearing/Decision: **02.11.2018**

Final Order No. 43184 / 2018

Per Bench :

The assessee is registered with the Service Tax Department and is engaged in the business of cross country pipeline with Oil & Gas Companies and also in various construction activities such as bridges, tunnels, roads and other infrastructure facilities.

1.2 During the course of Internal Audit, it was noticed that the assessee had not discharged the service tax liability in respect of the following projects :

(i) Water Supply/Treatment Project (for the period June, 2007 to October, 2007)

(ii) Hydro Electric Projects (for the period April, 2005 to August, 2007)

1.3 A Show Cause Notice dated 28.08.2008 was issued demanding service tax of Rs. 4,61,288/- for the period from June, 2007 to October, 2007 under "Works Contract Service" (WCS), Rs. 42,01,520/- for the period from April, 2005 to August, 2007 under "Commercial and Industrial Construction Service" (CICS) with interest under Section 75 and penalty under Section 76 and 78 of the Finance Act, 1994. The lower adjudicating authority vide Order-in-Original No. 91/2008 dated 29.12.2008 confirmed the demand, interest and also imposed penalty under Section 78 of the Act ibid. Thereafter, the assessee preferred an appeal before the Commissioner of Central Excise (Appeals), Chennai who vide impugned Order-in-Appeal No. 172/2009 (MST) dated 31.12.2009 allowed the appeal filed by the assessee holding that the construction of Hydro Electric dams was only rendered to the Kerala State Electricity Board which was consequently used by the Board in public interest and thus was not an activity of "Commerce or Industry". Being aggrieved by the same, the Revenue has come in appeal before this forum.

2. Today when the matter came up for hearing, Ld. ADC (AR) Shri. K. Veerabhadra Reddy appeared for the Revenue and Ld. Advocate Shri. M. Karthikeyan appeared for the respondent.

3. We have heard the rival contentions, perused the materials placed on record and have also gone through the decisions referred to during the course of arguments.

4. A perusal of the Order-in-Original reveals that the construction activity undertaken by the appellant was in the nature of a composite contract and the demand raised therein is also under CICS. This being the case, we find that this issue has been decided in favour of the taxpayer by the Hon'ble Apex Court in the case of ***Commissioner of C. Ex. & Cus., Kerala Vs. Larsen & Toubro Ltd. – 2015 (39) S.T.R. 913 (S.C.)*** followed by this Bench in the case of ***M/s/ Real Value Promoters Pvt. Ltd. & Ors. Vs. Commissioner of G.S.T. & Central Excise, Chennai & Ors. in***

Final Order Nos. 42436-42438/2018 dated 18.09.2018. Therefore, the demand under CICS for the period 04/2005 to 08/2007 cannot sustain.

5. With regard to the demand under WCS, we find that the work in connection with the construction of water treatment plants undertaken for Kerala Water Authority, cannot be covered under WCS as the same are not for any commercial or industrial purpose. We find that similar issues in this regard have already been decided in the case of ***Lanco Infratech Ltd. Vs. C.C.E. – 2015 (38) S.T.R. 709 (Tri. – LB.)*** and ***Nagarjuna Construction Co. Vs. C.C.E. – 2010 (19) S.T.R. 259 (Tri. – Bang.).*** On going through the rival contentions, we find force in the arguments of the Ld. Advocate that the construction activity was not for the purpose of commerce or industry.

6. Hence, we do not find any reason to disturb the finding of the first appellate authority. Accordingly, the appeal filed by the Revenue is dismissed.

(Operative part of the order was pronounced in open court)

(P Dinesha)	**(Madhu Mohan Damodhar)**
Member (Judicial)	Member (Technical)

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