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

ST/00127/2012

[arising out of Order-in-Appeal No.140/2011, dated 30.11.2011 passed by the Commissioner of Customs & Central Excise (Appeals), Trichirapalli]

J. ALEX RAJA APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, TRICHY RESPONDENT

Appearance:

For the Appellant Ms. S. Sridevi, Adv.
For the Respondent Shri S. Govindarajan, AC (AR)

CORAM:

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

Date of hearing/decision **25-03-2019**

FINAL ORDER NO. **40636 / 2019**

Per Bench:

The facts of the matter are that the appellants were undertaking various works for Bharat Sanchar Nigam Ltd., Airport Authority of India and Indian Railways. On scrutiny of records, it was found that the appellant had been engaged in the activity of construction of office buildings and erection of transmission towers and other associated structures. However, they were not discharging any service tax on these activities. Department issued a show-cause notice dated 21.04.2010, *inter alia*, proposing demand of Rs.18,42,934/- with interest as service tax liability on the amount received towards Commercial or Industrial Construction Service prior to 01.06.2007 and under Works Contract Service thereafter. The show-cause notice also proposed a demand of Rs.51,258/- toward service tax on the amounts received towards Cleaning Services during the period 20906-07 to 2008-09 with interest. The show-cause notice also proposed appropriation of amounts already paid-up by appellants for imposition of penalties under various provisions of law. In adjudication, the original authority vide Order dated 29.12.2010 confirmed proposals in the show-cause notice and also imposed penalties under section 77 and 78 of the Finance Act, 1994. In appeal, the Commissioner (Appeals) vide impugned order darted 30.11.2011 upheld the order of original authority. Hence this appeal. Today, when the matter came up for hearing on behalf of the appellant, the learned Advocate Ms. S. Sridevi made oral and written submissions, which are broadly summarized as under:-

(i) For the period prior to 01.06.2007, the appellants were providing composite Construction Service including both labour and materials and hence the show-cause notice proposing demand under Commercial or Industrial Construction Service cannot be sustained in view of the decision of Hon'ble Apex Court in the case of *Commissioner of Central Excise & Customs, Kerala Vs M/s. Larsen & Toubro Ltd.,* reported in *2015 (39) S.T.R.913 (S.C.)* has held that the levy of service tax on composite contracts is not sustainable.

(ii) For the period after 01.06.2007, although they admit that the service tax liability is payable under Works Contract, it is submitted that they are providing services to BSNL and other Govt. departments and were given to understand that the activities performed to Govt. agencies are not liable to service tax. She drawns our attention to Final Order Nos.41460 – 41462/2018, dated 10.05.2018 in respect of V. Chinnasamy and Ors., wherein on identical grounds and where also the appellants therein had provided services to BSNL and others under the mistaken belief that they need not pay service tax on the service provided to construction agencies. But it was held inter alia that demand invoking extended period cannot sustain and penalties was also set aside. She prays that similar benefit may be accorded to the present appellant also.

(iii) On the demand concerning cleaning services, the learned counsel concedes to tax liability. However, she prays for setting aside the penalty, since these services were provided to Govt. agencies and they were under bona fide belief that no tax was liable to be paid by them.

2. On the other hand, the Ld. AR Shri S. Govindarajan reiterates the impugned order. He further submits that appellants had not filed returns nor they took registration and hence the extended period is very much invocable.

3. Heard both sides.

3. After hearing both sides, for the period 01.06.2007, the demand will not in any case sustain in the light of the decision in the case of *M/s. Larsen & Toubro Ltd.,* (supra). For the period after 01.06.2007, the ratio laid down by the decision of the Tribunal in the

case of *V. Chinnasamy & 2 Ors., Vs Commissioner of Central Excise, Trichy* vide *Final Order Nos.41460-41462/2018, dated 10.05.2018* relied upon by the learned advocate is applicable on all fours in respect of Construction Services provided by the appellant. Here also the appellants were given to understand that no tax is liable to be paid by them as well as they under the bona fide belief that BSNL, AIA etc., being Govt. entities are not liable to tax. We find that this submission has been made before Commissioner (Appeals) that they were doing works only to Govt. agencies like BSNL, AIA etc., and they were given to understand they are not liable to service tax for the services provided to Govt. agencies, which was supported to some extent by CBEC Circular No.80/10/2004, dated 17.09.2004 wherein it had been clarified clearly that Govt. construction would not be taxable; that BSNL, which is Govt. establishment also informed the appellant that service tax is not applicable to the services rendered by the appellant to them; that the non-payment was only due to the confusion prevalent in the filed during the material period. In the circumstances, we find no difficulty in applying the ratio laid down in the case of *V. Chinnasamy & 2 Ors., Vs Commissioner of Central Excise, Trichy* vide *Final Order Nos.41460-41462/2018, dated 10.05.2018*. This being so, for the period after 01.06.2007, the demand invoking the extended period of limitation with respect to Works Contract Service cannot sustain and will require to be set aside, which we hereby do. It is, however, made clear that the appellant will be liable to pay service tax for the normal period of limitation calculated from the date of issue of the show-cause notice. However, for the same reasons no penalty will be imposable under section 78 *ibid* for the normal period. Ordered accordingly.

4. Now coming to the demand with regard to Cleaning Services, Ld. Advocate has conceded the tax liability. We do not therefore interfere with the demand of tax and interest. For same reasons discussed herein above, we hold that the penalty under section 78 *ibid* on this score also is unjustified, which we hereby do. However, we do not interfere with the penalty imposed under section 77 *ibid*.

5. Appeal party allowed in the above terms with consequential reliefs, if any.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

ksr
01-04-2019

	DRAFT			Remarks
	I	II	III	
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