CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, SZB, CHENNAI

REGIONAL BENCH - Division Bench B1

Service Tax Appeal No. ST/40260 of 2013

(Arising out of Order-in-Appeal No. 303/2012 dated 30.10.2012 passed by the Commissioner of Central Excise & Service Tax, (Appeals), Trichy).

Shri A. Thamilan, Contractor, Appellant
M/s. Power Electrical Works,
No. 4/95-A, Gandhi Nagar, Kattur,
Trichy-Thanjavur Main Road,
Tiruchirappalli.

Vs.

The Commissioner of Central Excise & Service Tax Respondent
No. 1, Williams Road, Trichy-620001.

APPEARANCE:

Shri J, Shankarraman, Advocate, for the appellant

Shri B. Balamurugan, AC. Authorized Representative for the Respondent

CORAM :

HON'BLE MR MADHU MOHAN DAMODHAR, Technical Member
HON'BLE MR P.DINESHA, Judicial Member

FINAL ORDER No. 40756/2019

Date of Hearing: **04.04.2019**
Date of Decision: **04.04.2019**

Per: P. Dinesha,

The appellant is a Proprietorship concern, owned by Shri A. Thamilan and is engaged in providing services of installation of electrical devices and other civil work like construction of road, registered under the category of 'Erection, Commissioning or Installation Service'. On intelligence gathered by the officers of Hqrs. of Anti-Evasion Unit, CCE & ST, Trichy, that the assessee had not discharged service tax liability on the services rendered to M/s. BHEL, Trichy, M/s. Trichirapppalli Distilleries and Chemicals Ltd., and M/s. Airport Authority of India, during the period 16.06.2005 to 31.03.2010, investigation was conducted by the Revenue which was followed by a show cause notice dated 08.10.2010 proposing to demand differential service tax, interest and also imposition of penalty under Sections 76, 77 and 78 of the Finance Act, 1994. The appellant duly replied and after considering the same, the adjudicating authority confirmed the demands proposed, to an extent of Rs. 11,89,183/- towards service tax, apart from interest and penalty under Section 77 and 78 of the Act. On appeal, the Commissioner (Appeals) rejected the appeal of the assessee and upheld the order of the adjudicating authority. Aggrieved, the assessee has preferred this Appeal.

2.1 Heard Shri J. Shankarraman, Ld. Advocate for the assessee and Shri B. Balamurugan, AC, Ld. DR, for the Revenue. Ld. Advocate submitted that following issues were considered by the Adjudicating authority:-

i) Whether the services provided under works contract are liable to be classified under the category of "Erection, Commissioning or Installation Services" prior to 01.06.2007;

ii) Whether the services provided to Trichirapalli City Corporation regarding road work is liable to Service tax;

iii) Whether the service provided to NIT, Bharadhidasan University, BHEL School are liable to service tax under the category of “Erection, Commissioning or Installation Services” prior to 01.06.2007 and dropped for the subsequent period;

iv) Whether services regarding conversion of single phase into three phase service connection for BHEL quarters and laying of HT cables at the residential township are liable to be taxed.

3. Ld. DR supported the orders of the lower authorities and submitted that the findings of the first appellate authority is correct in law and the demands are sustainable.

4.1 As regards the first issue Ld. Advocate submitted that the classification of Ërection, Commissioning or Installation Service for the period up to 31.05.2007 and thereafter under Works Contract Service, was incorrect since the appellant was only engaged in providing services such as electrical installation work/works contract for installation of electrical devices. In support of his contention he relied on the Hon’ble Supreme Court ruling in the case of CCE, Kerala Vs. Larsen & Toubro Ltd. – 2015 (39) STR 913 (SC), to state that indivisible work contracts were not taxable prior to 01.06.2007 and hence any demand prior to 01.06.2007 is not sustainable in law. We find from the perusal of the SCN, that the AA had sought to classify the service, considering the fact that the contract included both service as well as supply of materials, under ‘works contract’ service, but the period is clearly prior to 01.06.2007 and hence, the Ld. Advocate is correct in his assertion that the issue is squarely covered by the decision of Hon’ble Apex court, in the case of L & T (supra). This liability to tax on this ground is therefore set aside

4.2 With regard to the other issue, the demand of service tax on the activity undertaken at NIT, Bharatidasan University and

BHEL school prior to 01.06.2007, he reiterated that the demand on this is not sustainable in view of the Hon'ble Supreme Court judgment in L & T, supra and also submitted that from 01.06.2007, the demand on activity undertaken at BHEL school/hospital is not sustainable. As regards shifting of overhead cables/wire and laying of electrical cables up to the distribution point of residential or commercial localities/complex, Ld. Advocate relied on the Board's Circular No. 123/2010 dated 24.05.2010, we find that the above Circular is very clear. Moreover, an identical issue has been considered and decided by this Bench in the case of SRM Engineering Construction Ltd.- 2018 (11) GSTL 174 (Tri.-Chen.) also and therefore, the same is no more res integra. The demand therefore, on this score is liable to be set aside which we hereby do. Further, with regard to laying of high density HT cables, from the chart given by the adjudicating authority, we find that laying of cables beyond the distribution point of residential complexes alone becomes taxable but, in the impugned order we do not see any discussion or analysis of the actual facts involved but, fasten the liability. Therefore, a part of this issue is required to be remanded for factual verification to be placed on record and therefore to determine the tax liability, if any. The adjudicating authority is therefore, directed to ascertain whether the conversion of single phase into three phase connection beyond the point of residential complex, he shall also get the required factual information on the same from the assessee before arriving at the factual conclusion.

4.3 In the synapsis filed today during the hearing which is signed by the Ld. Advocate for the appellants, we note that an additional point has been raised about the appellant's activity with regard to TDCL, which activity according to the Ld. Advocate would not fall under Erection Commissioning and

Installation Service/Works Contract Service. On going through the grounds of appeal, we do not see any ground on this, but however, having dictated and signed the order sheet noting, we are remanding this issue to the file of the original authority.

4.4 With regard to penalties under Section 78 however, we see that the issue involved was clearly of interpretation which came to be settled only by the Hon'ble Supreme Court and therefore benefit of Section 80 could be extended and accordingly we delete the penalty levied under Section 78 of the Act. But however, no interference is called for with regard to the penalty levied under Section 77.

5. To sum up:-

i. Demand in respect of the services provided under the Works Contract but, demanded under the category of Erection Commissioning and Installation Services, prior to 01.06.2007 is set aside.

ii. Demands under both ECIS & WCS for services provided to NIT, Bharathidhasan University, BHEL for construction of school/hospital set aside, in view of SRM Engineering Construction Ltd.-2018 (11) GSTL 174 (Tri.-Chen.).

iii. Demand in respect of services regarding conversion of single phase into three phase service connection in BHEL for laying of HT cable upto the distribution point, the matter is remanded to the original authority with the direction that the demand will only sustain in respect of laying of electric cables beyond the distribution point of residential complexes and also to examine whether the conversion of single phase into three phase service connection is also similarly beyond the distribution point of the residential complex.

iv. Penalty under Section 78 is set aside and the penalty under Section 77 is upheld.

5. Appeal is partly allowed and partly remanded in the above terms:

(Order dictated and pronounced in the Open Court)

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

(P. DINESHA)
JUDICIAL MEMBER

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