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

ST/281/2009

(Arising out of Order-in-Original No.01/COMMR/ST/2009 dated 24.2.2009 passed by the Commissioner of Central Excise, Tirunelveli)

M/s.Annai Constructions Appellant

Vs.

Commissioner of Central Excise, Tirunelveli Respondent

Appearance

Shri Joseph Prabhakar, Advocate for the Appellant
Shri K.P. Muralidharan, AC (AR) for the Respondent

CORAM

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

Date of Hearing / Decision: **01.08.2017**

Final Order No. 41386/2017

Per Bench

The facts of the case are that the appellants are registered with the service tax department for rendering service under the category "Commercial or Industrial Construction Service". Upon gathering intelligence that the appellants have been suppressing the value of taxable service provided under the said category, the officers visited the

Sulekha Beevi

premises on 23.8.2006. After scrutiny of documents as well as recording statements, a show cause notice was issued for the period 10.9.2004 to 31.3.2006 demanding service tax along with interest as well as for imposing penalties. After due process of law, the original authority confirmed the service tax demand of Rs.28,23,980/- along with interest and imposed equal penalty under section 78 of the Finance Act, 1994. The amount already paid by the appellant was appropriated towards service tax demand. Hence this appeal.

2. On behalf of the appellant, learned counsel Shri Joseph Prabhakar submitted that one of the grounds put forward by the appellant before the authorities below was that the appellants executed the work in the capacity of sub-contractor for M/s. NEG Micron India Pvt. Ltd. and M/s. RS Windtech Engineers for the disputed period. That the main contractors had discharged the service tax liability and there was also an undertaking that the main contractor would discharge the service tax and therefore the appellant is not liable to pay service tax. Further, he submitted that the issue whether the said category of services is liable to levy of service tax prior to 1.6.2007 is settled by the judgment rendered by the Hon'ble Supreme Court in the case of Larsen & Toubro reported in 2013-TIOL-46-SC-CT-LB. That, therefore, the period of dispute

being prior to 1.6.2007, the demand is unsustainable. He therefore submitted that the appeal may be allowed.

3. Against this, the learned AR Shri K.P. Muralidharan reiterated the findings in the impugned order.

4. We have heard the submissions made by both sides.

5. The period involved is prior to 1.6.2007 and the category of services in dispute is commercial or industrial construction service which is covered by the judgment of the Hon'ble Supreme Court in the case of Larsen & Toubro (supra).

6. Following the same, we hold that the demand prior to 1.6.2007 is unsustainable. The impugned order is set aside and the appeal is allowed with consequential relief if any.

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

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Rex