CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

SOUTH ZONAL BENCH

CHENNAI

ST/265/2009

(Arising out of Order-in-Appeal No.60/2009 dated 27.02.2009 passed by the Commissioner of Central Excise (Appeals), Madurai)

Madurai Acme Enterprises Pvt. Ltd — Appellant

Vs

Commissioner of Central Excise, Madurai — Respondent

Appearance

Ms.Minchu Punnoose, Advocate — For the Appellant
Shri.R.Subramaniyam (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 : **7.08.2017**

FINAL. ORDER No. 41545/2017

Per Bench

The appellants are engaged in re-rubberizing of used and worn out rollers. The appellants receive used rubber rollers from their customers. The rubber parts of the rollers are removed and cleaned using lathe. The bought out raw materials like raw rubber, carbon block, zinc oxide, anti oxidants, accelerators and fillers are mixed and a sheet is made which is bonded on the cleaned metal roller. The bonded roller is vulcanized in steam

Customs, Excise & Service Tax Appellate Tribunal chambers and thus cured rollers are mounted on the lathe and given grinding using stone grinders to the specific requirement of clients. The department was of the view that such activity carried out by rate contract are classifiable under 'Management, Maintenance and Repair' services and taxable with effect from 16.06.2005. Show Cause Notice was issued demanding service tax of Rs.7,17,542/- alongwith interest and also for imposing penalties. After due process of law, original authority confirmed the demand along with interest and also imposed penalties. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of appellant, Ld.Counsel Ms.Minchu Mariam Punnose submitted that in the reply to Show Cause Notice appellants had contested the classification of service as well as their liability to pay service tax. They also contended that they should be extended the benefit of notification 12/2003-ST dt.20.6.2003 as they were discharging sales tax on 70% of the total value raised under the works contract. The appellants had registered under Business Auxiliary Service and had paid service tax under such category for the period 16.06.2005 to 31.10.2006. However department alleged suppression and issued the Show Cause Notice invoking extended period demanding service tax under Management, Maintenance and Repair Services. She adverted to para 6.3 and 12 of Impugned Order and argued that the Commissioner (Appeals) has found that the services are Works Contract Services and held that being a composite service even though appellants have discharged sales tax are liable to pay service tax on the service portion of the contract. She relied upon the judgement in the case of Larsen & Toubro rendered by Hon'ble Apex Court reported in M/s.Larsen & Toubro Vs CCE & Customs, Kerala, 2015 (39) STR 913 (SC) and submitted that the period being prior to 1.6.2007, the demand is unsustainable.

3. Against this the Ld.AR Shri.P.Subramaniyam reiterated the findings in the impugned order.

4. Heard both sides.

5. The main ground raised by appellant is that the period involved is prior to 1.6.2007 and basing upon findings of Commissioner (Appeals), being a Works Contract Service the demand is unsustainable. The period is 16.6.2005 to 31.10.2006. In para 6.3 the Commissioner (Appeals) has observed that the property in the goods always vests with the customer who gives the rollers for re-rubberisation and therefore the activity is Works Contract Service. In para 12 of impugned order, the Commissioner (Appeals) has arrived at his conclusion that the activity is Works Contract Service. This being the case, we have to say that appellant is covered by the judgement of Hon'ble Apex Court rendered in the case of Larsen & Toubro Ltd (supra). Following the same we hold that the demand is unsustainable.

6. In the result, impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

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

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

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

C L 1

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy

सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकरण/(CESTAT)
चेन्नै/Chennai