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

ST/00399,00401/2009

[arising out of Order-in-Original No.03/COMMR/ST/2009. Dated 15.04.2009 passed by the Commissioner of Central Excise, Tirunelveli]

M/s.LASMI CHANDER ENGINEERING CO. PVT. LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, TIRUNELVELI RESPONDENT

Appearance:

For the Appellant None
For the Respondent Shri K. P. Muralidharan, AC (AR)

CORAM:

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

Date of hearing/decision **13-12-2017**

FINAL ORDER NO.s. 43402-43403/2017

Per Bench:

These appeals emanate out of the same order and were heard together and disposed of by this common order. The parties are referred to as "assessee" and "Revenue" for the sake of convenience.

2. Brief facts of the case are that appellants were engaged in "Erection, Commissioning and Installation work" had not discharged the service tax liability on the services rendered. After investigation

Customs, Excise & Service Tax Appellate Tribunal

and scrutiny of records, show-cause notice was issued to the appellants proposing to recover the service tax along with interest and for imposing penalties. The demand was made under the category of "Erection, Commissioning and Installation work" and Maintenance or Repair Service." After adjudication, the original authority confirmed demand of Rs.71,08,868/- along with interest and appropriated the amounts already paid by the appellants. A penalty of Rs.24,34597/- was imposed under section 78 of the Finance Act, 1994. Being aggrieved by the said order, the appellants have filed the present appeal. The department has also filed an appeal aggrieved by the dropping of penalty under section 76 of the Finance Act, 1994.

3. None appeared on behalf of the assessee, though repeated notices were issued. The assessee has submitted in their appeal that services were mainly rendered by them to Government owned entities such as, TNEB, ISRO, PWD, Indian Rare Earths Ltd., Centre for Wind Energy Tech etc., while some projects were executed for reputed private companies like Vestas RRB, DCW Ltd., etc. The charges for services rendered were collected from the above clients by raising proper invoices and were properly accounted by the assessee. The assessee had not collected service tax and they were not aware of the same. After receipt of summons, the respondents applied for registration under "Erection, Commissioning and Installation work" as well as "Repair and Maintenance Services." Even before issuance of the show-cause notice, the assessee paid Rs.16,42,000/-. In reply, the assessee had stated that the service tax liability would be reduced since the amount of Rs.24,34,597/- is the service tax on services rendered to M/s. RS Wind Tech, as sub-contractor. The respondents

had only assisted M/s. RS Wind Tech., and documentary evidences were also produced. The original authority vide his order had confirmed the demand of Rs.46,74,213/- being the service tax for services rendered to clients other than M/s. Wind Tech. The assessee had paid the amount along with interest even though the demand was time-barred. Taking the facts into consideration, the original authority had dropped the penalties imposed under section 76 and 77 of the Act. That the appellant is not liable to pay an amount of Rs.24,34,597/- as these are services rendered as a sub-contractor to M/s. RS Wind Tech. That the appellants having established by documentary proof that the main contractor had discharged the service tax liability, the demand of service tax from the assessee again on the said services, cannot sustain. They have relied upon the judgments in the case of *M/s. OKIOS Vs Commissioner of Central Excise* reported in *2007 (5) S.T.R. 229 (Tri.-Bang.)*; (ii) *M/s. Senmac Pvt. Ltd. Vs Commissioner of Service Tax* reported in *2006 (4) S.T.R. 475 (Tri.-Bang.)*; and (iii) *M/s. BBR (India) United Vs Commissioner of Central Excise* reported in *2006 (4) S.T.R. 269 (Tri.-Bang.)*. Thus, the assessee prayed to re-compute the service tax liability treating the total receipt as cum-tax and also to set aside the demand of service tax to the tune of Rs.24,34,597/-.

4. The learned Authorised Representative Shri K.P. Muralidharan reiterated the findings in the grounds of appeal filed by the Revenue. He submitted that the assessee had not taken registration and was not discharging the service tax liability. The service tax was paid only on interferenceby the department. This goes to show that the appellants had intentionally evaded payment of

service tax. The original authority erred in invoking section 80 of the Finance Act, 1994 to set aside the penalties imposed under section 76 and 77 of the Act. He submitted that the said penalties are required to be imposed.

5. None appeared for the appellants despite repeated notices issued. Heard the Ld. AR and perused the submissions made by the assessee in the appeal grounds. The assessee is aggrieved by confirmation of demand to the tune of Rs.24,34,597/-. The assesee contends that the said amount pertains to services rendered as sub-contractor to M/s. RS Wind Tech. That the main contractor having discharged the liability, the assessee cannot be called upon to pay the same. The assessee has not produced any evidence to establish that the assessee was a sub-contractor and that the main contractor has discharged the service tax liability. In the absence of such proof, the claim of the assessee cannot be considered. The category of impugned services in Erection, Commission and Installation Services and it shows the Maintenance and Repair Services were part of it, as a composite contract. The department is aggrieved by the non-imposition of penalty under section 76 and 77 of the Finance Act, 1994. We find that the Commissioner in the impugned order has imposed equal penalty under section 78 to the tune of Rs.24,34,597/-, which is the undischarged service tax by the assessee. In such circumstances, the penalty under section 76 is unwarranted. We, therefore, do not find any merit in the appeal filed by the department.

Customs, Excise & Service Tax Appellate Tribunal

6. In the result, from the discussions made above, we do not find any grounds to interfere in the impugned order. The appeals filed by the assessee and the department, are both dismissed.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

Sulekha Beevi

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

प्रमाणित प्रति / CERTIFIED TRUE COPY
K. S. Ramesh
31/01/18
सहायक पंजीकार / Assistant Registrar
सीमा शुल्क, उत्पाद शुल्क एवं सेवा कर अपीलीय अधिकरण,
चेन्नई / CESTAT, CHENNAI - 600 006.

ksr
15-01-2018

Customs, Excise & Service Tax Appellate Tribunal