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

ST/S/274/2011 & ST/392/2011

(Arising out of Order-in-Original No. 12/2011 dated 31.03.2011 passed by the Commissioner of Central Excise, Chennai-I Commissionerate, Chennai).

M/s. Design Care Appellant

Vs.

CST, Chennai Respondent

Appearance

Shri N. Viswanathan, Advocate
for the Appellant

Shri K.P. Muralidharan, AC (AR)
for the Respondent

CORAM :

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER
Hon'ble Shri B. RAVICHANDRAN, TECHNICAL MEMBR

Date of Hearing/Decision: **22.12.2017**

FINAL ORDER No. 43449**/2017**

Per: B. Ravichandran

The matter is listed for stay. Since the appeal is relating to 2011, with the consent of both sides, after waiving the pre-deposit we take up the main appeal itself for a decision on merit.

2. The only dispute in the present appeal is the valuation to be arrived for taxing services rendered by the appellant. The two

Excise & Service Tax Appellate Tribunal Customs, aspects of the valuation now in dispute are that the abatement claimed in terms of Notification No. 15/2004-ST, considering the services as Constriction of Commercial Buildings and the total receipt of taxable income in terms of the returns filed by the appellant. The Revenue proceeded to confirm the tax demand against the appellant holding the services as Finishing and Completion Services under Construction of Commercial Building without allowing any abatement. Further, the gross value for the purpose of taxing the appellant was arrived at based on the Bank statements, which the appellant has contending includes various other receipts, loans etc., which are not to be taxed.

3. WE have heard both sides and perused the appeal records.

4. The appellants claimed that they have rendered a composite service with supply of materials as well as the provision of service during the material time and the tax liability will arise only w.e.f. 01.06.2007, in view of the decision of the Apex Court in the case of Larson & Toubro Ltd. as reported as 2015 (39) STR 913 (S.C.); after 01.06.2007 they are discharging service tax under such services with composition rate, in terms of 2007 Rules. This aspect requires re-examination by the original authority in view of the Apex Court decision supra.

5. On the second issue regarding consideration liable to be taxed, we find force in the plea of the appellants that various receipts shown in the bank account cannot be itself be a taxable value in terms of Section 67 of the Act. The claim of the appellant

Customs, Excise & Service Tax Appellate Tribunal is that they have been filing ST-3 returns and the same can be verified with supporting evidences. We find force in such submission. Accordingly, this aspect also requires re-adjudication. The other issues regarding limitation, penalty are also kept open.

6. In view of the above observation the impugned order is set aside and the matter is remanded to the original authority for fresh decision, after giving due opportunity to the appellants.

(Order dictated and pronounced in the open Court on)

(B. RAVICHANDRAN) 22.12.17
TECHNICAL MEMBER

(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
28/02/18
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