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

ST/239/2008

(Arising out of Order-in-Original No. 3/2008 (ST) dated 13.8.2008 passed by the Commissioner of Central Excise, Tiruchirapalli)

M/s. Trichy Construction Company Appellant

Vs.

CCE, Tiruchirapalli Respondent

Appearance

Shri M. Karthikeyan, Advocate for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

CORAM

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of Hearing / Decision: **06.02.2017**

Final Order No. 40243/2017

Per D.N. Panda

It is submission on behalf of the appellant that works contract not being taxable before 1.6.2007, in absence of express provision to tax the same prior to that date, appellant is not liable to service tax in respect of construction activity carried out by it. Section 65(105)(zzzza) of the Finance Act, 1994, incorporated with effect from 1.6.2007 specifically brought works contract service in -to the scope of taxation. Therefore the appellant is not liable to service tax in respect of the contracts executed for the period from 10.9.2004 to 31.5.2007 following the ratio laid down in Commissioner of Central Excise, Kerala Vs. Larsen & Toubro Ltd. as reported in 2015 (39) STR 913 (SC).

2. So far as the period from 1.6.2007 to 30.9.2007 is concerned, it is submission of the appellant that they have exercised option to be governed by composition scheme and levy if any is to be made, that shall be following the rules relating to such scheme.

3. Revenue supports the adjudication.

4. Heard both sides and perused the records.

5. Law relating to levy of service tax on work contract was enacted with effect from 1.6.2007. Although theory of equivalence was enacted in section 67 of the Finance Act, 1994 with effect from 18.5.2006 to determine the value of the services involved in works contract, law relating to the levy of service tax on works contract was enacted with effect form 1.6.2007. According to section 67 of the Act, if the provision of services is for a consideration which is not ascertainable and the manner of ascertainment has been prescribed by rules, equivalent value of the service was meant to be taxed. Appellant shall be governed by section 67 of the Act for

determination of the value of the service involved in works contract with effect from 1.6.2007. For the period after that, if the appellant had exercised option to be governed by composition scheme, learned adjudicating authority shall examine whether the appellant was eligible under law, to be so governed. If so, on fulfillment of the conditions of the scheme, the appellant may be extended that facility.

6. In the result, there shall be no levy of service tax on the indivisible works contract executed from 10.9.2004 to 31.5.2007. But for the period thereafter, appellant shall be governed by section 67 of the Finance Act, 1994 for determination of value of service involved in the works contract made taxable with from 01.06.2007 and by the composition scheme, if any, opted by it if otherwise not deniable to such scheme.

7. So far as penalty is concerned, in view of the confusion of the law relating to leviability of service tax on works contract, there shall be no penalty.

8. In the result, appeal is partly allowed and partly remanded to the adjudicating authority with the above direction.

(Dictated and pronounced in open court)

14.02.2017

(MADHU MOHAN DAMODHAR)
Technical Member

10/2/2017

(D.N. PANDA)
Judicial Member

Customs, Excise & Service Tax Appellate Tribunal

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