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

Appeal Nos.ST/47/2008 & ST/172/2008

[Arising out of Order-in-Original No.13/2007 (ST) dated 10.12.2007 and OIO No.1/2008 (ST) dt. 7.5.2008 passed by the Commissioner of Central Excise, Tiruchirapalli]

1. Taher Ali Industries & Projects Pvt.Ltd.
2. Ancor Ceramic Co.Private Ltd. Appellant

Versus

Commissioner of Central Excise,
Tiruchirapalli Respondent

Appearance:

Shri Sayed Tausif Ali, G.M (Appellant No.1)
Shri S. Gokarnesan, Advocate (Appellant No.2)
For the Appellant

Shri S. Nagalingam (AC), A.R
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 : 19.04.2017

FINAL ORDER No. 40640-40641/2017

Per Madhu Mohan Damodhar

Both these appeals being related on the same issue, although emanating from different impugned orders, are being taken up together for disposal.

2. The facts of the case are that appellant in Appeal No. ST/47/2008 namely, M/s.Taher Ali Industries & Projects (hereinafter referred to as "Taher Ali" for the sake of brevity), were executing

Customs, Excise & Service Tax Appellate Tribunal various projects as main contractors which involved supply of manufactured goods namely PSC pipes. These goods were supplied to Tamil Nadu Water Supply and Drainage Board (TWAD). The department took the view that the service provided by Taher Ali to TWAD during the period 01.07.2003 to 31.10.2006 were in the nature of erection and commissioning or installation services. Show Cause Notice dt. 05.10.2007 was issued to Taher Ali inter alia proposing demand of service tax amounting to Rs.1,36,98,018/- for the period 01.07.2003 to 31.10.2006 along with interest thereon and imposing penalties under various sections of the Finance Act, 1994. In adjudication, original authority vide impugned order dt. 10.12.2007 confirmed the proposals in the SCN and also imposed equal penalties under Section 78 ibid along with penalties under Section 76 & 77 ibid. Hence this appeal.

3. In respect of Appeal ST/172/2008, appellant M/s.Anchor Ceramic Co.Private Ltd. (hereinafter referred to "Anchor" for the sake of brevity), were sub-contractors for M/s.Taher Ali Industries and Projects Pvt. Ltd. (appellant in appeal ST/47/2008). They had undertaken the work on back to back basis consisting of manufacturing, supplying, laying, jointing, testing and commissioning of Mayiladuthurai Underground Drainage System (MUDS). The payments were received by Anchor from Taher Ali for the works as stated above. It appeared to the department that the service rendered by Anchor to Taher Ali are taxable service in relation to commissioning and installation for the period 01.07.2003 to 09.09.2004 and erection, commissioning or installation for the period 10.09.2004 to 23.10.2006. Accordingly, a SCN dt. 1.2.2008 was

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issued to Anchor inter alia proposing demand of service tax of Rs.78,17,768/- along with interest thereon and imposition of penalties under various sections of Finance Act, 1994. In adjudication, original authority vide impugned order dt. 07.05.2008 while extending cum duty benefit, however confirmed service tax liability of Rs.71,27,204/- along with interest thereon, equal penalty under Section 78 ibid and also penalties under Section 76 & 77 ibid. Aggrieved, appellant has preferred this appeal.

4 When both the appeals came up for hearing, on behalf of appellant Taher Ali, Shri Sayed Tausif Ali, General Manager who is authorized to appear on behalf of appellant reiterated the grounds of appeal and pointed out that these services provided to Anchor were in the nature of composite services which would fall under the category of "Works Contract Service". The services provided by them pertain to the period prior to 01.06.2007 and hence only from that date, works contract service was made taxable service under Finance Act,1994. For these reasons, there can be no liability on them for the services rendered by them prior to that period.

5. On behalf of second appellant namely, Anchor, Shri S. Gokernesan, Ld.Advocate supports and reiterates the same arguments put forth by Shri Sayed Tausif Ali appearing for Taher Ali.

6. Ld. A.R Shri S. Nagalingam, on behalf of the department, supports the adjudication orders.

7. Heard both sides and gone through the facts of the case.

8. The matter is no longer *res integra*. Composite services of the genre provided by the appellant herein prior to 1.6.2007 would fall under the ambit of 'works contract service'. The contention of the

appellant that the said services would not be leviable under service tax prior to 01.06.2007 from which date works contract service became taxable is correct. This is the law that has been laid down by the Hon'ble Apex Court in the landmark judgment in the case of *CCE & Cus., Kerala Vs Larsen & Toubro Ltd.* – 2015 (39) STR 913 (SC). The above view of the Hon'ble Apex Court has been reiterated in a number of subsequent judgements including a recent one in the case of *Commissioner Vs Sobha Developers Ltd.* – 2017 (4) TMI 584-SC.

9. Ratio of the Supreme Court has also been followed in a number of Tribunal decisions, including by this very Bench in the case of *Land Mark Construction Vs CST Chennai* – 2016 (9) TMI 1238 – CESTAT Chennai and in the case of *True Value Homes (India) Pvt. Ltd. Vs CST Chennai* vide Final Order No.40417/2017 dt. 3.3.2017

10. In the event, following judicial discipline, we hold that the impugned orders will not sustain and hence will have to be set aside, which we hereby do. Both the appeals are allowed with consequential benefits, if any, as per law.

(Dictated and pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

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