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

ST/172/2010

(Arising out of Order-in-Appeal No. 167/2009 (M-ST) dated 22.12.2009 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Peninsula Designs (P) Ltd. Appellant

Vs.

Commissioner of Service Tax, Chennai Respondent

Appearance

Shri G. Natarajan, Advocate for the Appellant
Shri K. Veerabhadra Reddy, JC (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: **25.10.2017**

Final Order No. 42374/2017

Per Bench

Brief facts are that the appellants were undertaking completion and finishing services such as acoustic applications or fittings and other similar services like providing of false ceiling, acoustic panel partition relating to thermal and acoustic insulation etc. Department took the view that these are taxable services which fall under the category of Commercial or Industrial Construction Service for the period June 2005 to March 2008.

Customs, Excise & Service Tax Appellate Tribunal

Accordingly, the adjudicating authority vide an order dated 30.3.2009 confirmed the demand of Rs.44,34,115/- along with interest thereon and also imposed penalty under section 78 of the Finance Act, 1994. In appeal, Commissioner (Appeals) vide the impugned order dated 22.12.2009 upheld the order of the original authority. Hence this appeal.

2. Today, when the matter came up for hearing, on behalf of the appellant, ld. counsel Shri G.Natarajan submits that in the first place, the activities performed by the appellant, being in the nature of works contract, the appellants are not exigible to service tax prior to 1.6.2007 by virtue of the judgment of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Kerala Vs. Larsen & Toubro Ltd. - 2015 (39) STR 913 (SC). For the remaining period i.e. from 1.6.2007 to 31.3.2008, they had already discharged tax liability for that period under Commercial or Industrial Construction Service with a claim of abatement of 67%. However, since the services provided were works contract, they should get the benefit of composition scheme, according to which, by their own calculation, they are required to pay only Rs.96,013/-. Against this, as evidenced by Annexure - I to the show cause notice available in page 27 of the appeal book, for the period June 2007 to March 2008, they have already discharged the tax liability of Rs.1,91,426/- which is much higher than what is

required to be discharged under composite scheme. They however do not seek refund of the excess amount paid. Ld. counsel also averred that they are not barred on any account for availing the composite scheme during the said period.

3. On the other hand, ld. AR Shri K. Veerabhadra Reddy reiterated the orders passed by the lower authorities.

4. Heard both sides.

5. In view of the judgment of the Hon'ble Supreme Court in the case of Larsen & Toubro Ltd. (supra), the appellants will not be liable to pay service tax prior to 1.6.2007. For the period from 1.6.2007 to 31.3.2008, considering the services as works contract service, they would be eligible for composition scheme as contended by ld. counsel. It is also noticed that the appellants have already discharged more than double the amount that would have been otherwise payable under composition scheme. Ld. counsel also submits that they do not intend to claim refund of the balance amount. In the event, we find that the tax liability, after application of composition scheme, has already been discharged by the appellant. Hence there is no further liability that is required to be paid by the appellant. For this reason, there shall be no further tax liability beyond the amount already paid by the appellant.

6. As regards penalty, undoubtedly, the entire issue was mired in confusion and the matter had to travel upto the Apex

Court for eventual clarification. Viewed in this light, we find that there is no cause for imposition of penalty for which reason the penalty imposed under section 78 is set aside.

7. In the result, the appeal is partly allowed in the above terms.

(Order dictated and pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

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

Rex

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति/Certified True Copy
3/11
सहायक पंजीकार/Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकारी/(CESTAT)
चेन्नै/CHENNAI