CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI.

PRINCIPAL BENCH,COURT NO. I

Service Tax Appeal No. 52169 Of 2018

[Arising out of the Order-in-Appeal No. 223 (SM)ST/JPR/2018 dated 27.03.2018 passed by the Commissioner (Appeals) Central Excise, & CGST, Jaipur.]

M/s Blue Star Ltd **Appellant**
A-19, Sahakar Path,
Bhawani Singh Road,
Jaipur

vs

The Additional Commissioner, **Respondent**
Central Excise Commissionerate,
Jaipur I
NCR Building, Satute Circle,
C-Scheme, Jaipur
Rajasthan-302005

APPEARANCE:
Mr. A.K. Batra, Advocate for the Appellant
Mr. Harshvardhan, Authorised Representative for the Department

CORAM :

HON'BLE SHRI JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing/ Decision: October 30, 2023

FINAL ORDER NO. 51497/2023

JUSTICE DILIP GUPTA

M/s Blue Star Ltd Jaipur[1] has sought the quashing of the order dated 27.03.2018 passed by the Commissioner (Appeals) that upholds the findings recorded by the Additional Commissioner confirming the demand of service tax with interest and penalty.

2. The appellant was engaged as a sub-contractor by M/s

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1 the appellant

Simplex Infrastructure[2] which had been awarded a contract for construction of New International Terminal building complex at Jaipur Airport. The main contractor engaged the appellant as a sub-contractor for supplying, installation, testing and commissioning of heating, ventilation and air conditioning system at the building complex. According to the appellant, the contract awarded by the main contractor to the appellant involves both transfer of material as well as provisioning of services and, therefore, the contract is composite in nature.

3. A show cause notice dated 23.10.2012 was issued by the department alleging that the appellant was liable to pay service tax under erection, commissioning or installation services made taxable under section 65(105) (zzd) of the Finance Act, 1994[3].

4. According to the appellant, the services provided by the appellant would fall under works contract services which was made taxable from 1.7.2007 under section 65 (105) (zzzza) of the Finance Act.

5. The Additional Commissioner, in the order dated 13.10.2014, noted the following facts:

> "10.6 I find that property in goods has been passed to the service receiver in the case but VAT or sales tax has not been paid on that property. The notice has contended that customer has taken an exemption certificate in respect of leviability of work contract tax from the concerned Sales Tax department. From a perusal of exemption certificate submitted by the noticee, I find that main contractor has opted for the exemption fees method."

2 Main contractor
3 Finance Act

6. However, the Additional Commissioner held that the appellant had provided services under erection, commissioning or installation service for the reason that the appellant had not paid VAT on the property transferred under the contract and nor the appellant had sought classification of the service under works contract.

7. The Commissioner (Appeals) in the impugned order dated 27.03.2018 has also found as a fact that the appellant as a sub-contractor was required to supply, install, conduct testing and commissioning of the heating system for the New International Terminal Building Complex at Jaipur, but has declined to classify the service rendered by the appellant under works contract service for the reason that appellant had not paid VAT.

8. Shri A.K. Batra learned counsel for the appellant has submitted that the Commissioner (Appeals) committed an error in declining to categorise the services rendered by the appellant under works contract service solely for the reason that the appellant had not paid VAT on the transfer of propriety in goods involved in the execution of the contract. It is his submission that what was required to be examined was the nature of service actually performed by the appellant and not whether the appellant had paid VAT.

9. Learned authorized representative appearing for the Department has, however, supported the impugned order and also pointed out that when the Adjudicating Authority adjudicated the show cause notice, the Supreme Court had not decided

Commissioner of Central Excise and Customs, Kerala vs. **Larsen & Toubro Ltd**[4]**.**

10. The submissions advanced by learned consultant for the appellant and the learned authorized representative appearing for the department have been considered.

11. In view of the submissions advanced by the learned counsel for the appellant and the findings recorded, both by the Additional Commissioner and the Commissioner (Appeals), there is no manner of doubt that the services rendered by the appellant would fall under works contract service and not under erection, commissioning for installation service. This is evident from the decision of the Supreme Court in **Larsen and Toubro** wherein it has been held that a works contract is a separate specious of contract distinct from contract for services simplicitor recognized by the world of commerce and law and as such has to be taxed separately.

12. A Division Bench of the Tribunal in **Jambeshwar Construction Co.** vs. **Commissioner of Central Excise and Service Tax-Jaipur- II**[5] also held as follows:

> "7. We have very carefully perused the decision of the Hon'ble Supreme Court in case Larsen and Turbo (supra). The Apex Court has held that composite services are to be classified only under the category of Works Contract Services with effect from the date of introduction of such service i.e. 1.06.2007. The Apex Court has also categorically held in its finding that such composite services cannot be liable for service tax under any other

4 2015(39) S.T.R. 913 (S.C.)
5 MANU/CE/0477/2019

> category prior to the introduction of WCS. In the light of the decisions of Apex Court, there can be no levy of service tax for the period upto 31.05.2007."

13. The reasoning given by the Commissioner (Appeals) that the services rendered by the appellant would not fall under works contract service for the reason that the appellant had not discharged the VAT liability on the transfer of goods involved in the execution of the contract is not correct. Classification of a service would depend upon the nature of service provided and not on whether VAT had been discharged on the goods portion of the contract.

14. Such being the position, the order dated 27.03.2018 passed by the Commissioner (Appeals) deserves to be set aside and is set aside. The appeal is, accordingly, allowed.

(Order dictated in the open court)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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