IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Appeal No. ST/55524/2013-CU [DB]

[Arising out of Orders in Appeal No. 240(RDN) ST/JPR-I/2012 dated 22.10.2012, passed by the Commissioner, Central Excise & ST, Jaipur.]

For approval and signature:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Simran Construction Company ....Appellant

Vs.

CCE & ST, Jaipur ....Respondent

Appearance:

Shri Ms. Rinki Arora, Advocate for the Appellants
Shri Sanjay Jain, DR for the Respondent

<u>CORAM</u>:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing: 29.12.2016

Date of Pronouncement: 05.01.2017

FINAL ORDER NO. <u>50030 / 2017-CU</u> [DB]

<u>Per B. Ravichandran</u>

The appeal is against order dated 22.10.2012 of Commissioner (Appeals-I) Jaipur. The appellants are engaged in installation of Tanks/ Pumps and related jobs for various retail outlets of M/s. Hindustan Petroleum Corporation Limited. The dispute in the present case relates to appellant's liability for service tax under the category of Erection, Commissioning and Installation Services, for the period

01.10.2004 to 31.03.2009. The Original Authority confirmed service tax liability of Rs. 24,94,685/-. He also imposed penalties under section 76, 77 and 78 of the Finance Act, 1994. On appeal, the Commissioner (Appeals) vide impugned order, upheld the original order.

2. Ld. Counsel for the appellant submitted that the appellants entered into contract with M/s. HPCL. These contracts were composite contracts involving supply of materials as well as labour for construction activities. The recipient of service, in fact, was deducting works contract tax and deposited the same with sales tax department. The contracts are correctly classifiable for service tax under "Works Contract Services" with effect from 01.06.2007. In January 2007, the Central Excise officers directed the appellants to register under 'Commercial or Industrial Services' and 'Maintenance and Repair Services'. The appellant voluntarily deposited the service tax with effect from 23.01.2007, treating the services under the category of Commercial Construction Services availing abatement under Notification No. 15/2004-ST and 1/2006-ST. They have fulfilled the conditions of the said notifications. The composite work contract is liable to service tax only with effect from 01.06.2007 as held by the Hon'ble Supreme Court in *Commissioner vs. Larsen & Toubro Limited – 2015 (39) STR 913 (SC)*. Further, the ld. Counsel submitted that the appellant were registered with the department and deposited the service tax. The present issue is relating to classification of service and is only a question of interpretation. Accordingly, it is the

submission of the ld. Counsel that demand for extended period in such situation, cannot be sustained.

3. Ld. AR reiterated the findings of the lower authorities.

4. We have heard both sides and perused the appeal records. The demand of service tax against the appellant was confirmed under the category of Erection, Commissioning and Installation Service. We note that lower authorities have recorded that there was supply of materials as well as labour in the work executed by the appellant. The composite nature of contract has been clearly recorded. Further, we also note that the exemption notification 1/2006-ST was denied only on the ground that certain plant, machinery and equipment were supplied by the recipient of service. We find that admittedly, the appellant executed composite works contract but service tax liability will arise with effect from 01.6.2007 as held by the Hon'ble Supreme Court in *Larsen & Toubro Limited (supra)*. As such the appellant are not liable to service tax paid up to that date, in respect of composite works contract involving supply of materials and labour. We note that the appellants were registered with the department and were discharging service tax under the category of Construction service. The proceedings initiated now are to re-classify the service under Erection, Commissioning and Installation Service. The issue involved with reference to tax liability of contract has been the subject matter of dispute and litigation. The matter was finally resolved by the decision of Hon'ble Supreme Court in *Larsen & Toubro Limited (supra).* Having examined the facts of the present case, we find that

he appellants were registered with the department and discharging service tax under a different category of service. On the basis of facts recorded by the lower authorities, we find that in this case, there can be no allegation of fraud, collusion or willful mistake to invoke the extended period. We find that the demand, if any should be limited to a normal period under the category of Works Contract as claimed and admitted by the appellant. On the same reasoning, no penalty shall be leviable on the appellant and appellants are rightly eligible for waiver of penalties under section 80 of the Finance Act, 1994.

5. The appeal is disposed of in the above terms.

[Pronounced in the open Court on 05.01.2017]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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