CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 21.12.2016

Appeal No. ST/430/2012-ST[DB]

[Arising out of the Order-in-Appeal No. 218/BPL/2011 dated 01.12.2011 passed by the Commissioner of Central Excise, Bhopal]

Shri Anwar Khatri … Appellant

Vs.

C.C.E. Bhopal ... Respondent

Appearance:

Present Ms. Asmita Nayak, Advocate for the appellant
Present Ms. Neha Garg, D.R. for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan , Technical Member

FINAL ORDER NO.56372/2016

Per Justice (Dr.) Satish Chandra:

The present appeal is filed against the order in appeal number 218//2011 dated 01.12.2011.

2. The appellant during the period 2005-07 was rendering several services like maintenance and repairs of machinery, man power supply, cleaning services etc. to M/s. Sanjay Gandhi Thermal Power Station and has been paying service tax under the various categories. However, when the Revenue calculated the consideration received from the said services, it was found that the appellant had not paid full tax on payment received from the said service recipient and thus there was a short levy, so, show cause notice was issued to the appellant and later the adjudicating authority has confirmed demand of Rs.4,77,996/-.

3. The same was partly confirmed by the order in appeal. Still not satisfied, the appellant has filed the present appeal.

4. With this background we have heard Ms. Asmita Nayak, Advocate for the appellant and Ms. Neha Garg, D.R. for the respondent.

5. On perusal of the record it appears that before 01.06.2007 service tax is not liable on the indivisible work contract as per the ratio laid down by the Hon'ble Apex Court in the case of ***CCE Kerala Vs. Larsen & Toubro Ltd. 2015 (39) STR 913 (SC).*** During the course of argument the Ld. DR for the Department submits that the work contracts in question were never produced before the lower authorities. However, the Ld. Counsel for the appellant has shown one of the work contracts. She assured that the remaining work contracts can be produced for verification.

6. When it is so, then we set aside the impugned order and remand the matter back to the original adjudicating authority to re-examine the work contracts and to decide the issue afresh in the light of the above discussion but by providing reasonable opportunity to the appellant. Fresh evidence, if need be, may be admitted as per law.

7. In the result, appeal filed by the appellant is allowed by way of remand.

[Dictated and Pronounced in the open court]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

Bhanu