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

Appeal No. ST/273/2011-CU[SM]
[Arising out of Order-in-Appeal No. IND/328/2010 dated 14.10.2010, passed by the Commissioner of Customs, Indore]

Vijay Enterprises **....Appellant**

Vs.

C.C.E.- Indore **....Respondent**

Appearance:

Sh. Krishan Garg, CA for the Appellant
Sh. M.R. Sharma, AR for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 5.1.2017

FINAL ORDER NO. 50238 /2017-CU[SM]

Per V. Padmanabhan

The present appeal is directed against the Order-in-Appeal dated 14.10.2010 passed by the Commissioner (Appeals), Indore. The appellant is engaged in the business of carrying out Civil Construction. They have undertaken activities such as setting up a petrol pump of HPCL and other construction related activities and paid the Service Tax paid under the category of "Commercial and Industrial Construction" for the period upto 1.6.2007 (On which date works contract service was included as separate category of services). They filed a refund claim for Service Tax paid upto 1.06.2007, which stands rejected by the Original Authority vide his order dated 17.2.2010. When the issue was challenged in appeal the Order-in-Original was upheld. Hence, the present appeal.

2. With the above background, I have heard Shri Krishan Garg, Ld. CA of the appellant as well as Shri M.R. Sharma, ld. AR for the appellant.

3. The Ld. Counsel for the appellant submits that the issue of payment of Service Tax on "Works Contract Services" has been settled by Hon'ble Supreme Court in the case of **Commissioner of Central Excise & Cus., Kerala Vs. Larsen & Toubro Ltd. 2015(39) S.T.R. 913 (S.C.).** After the decision of the Apex court, it is settled that for the period prior to 1.6.2007 no Service Tax can be levied on such works contract services. Accordingly, he prayed that the refund may be allowed.

4. Ld. DR, fairly concedes that the issue is covered by the decision of the Apex court as above.

5. The activities undertaken by the appellant are pre-dominantly in the nature of Civil Construction which involves both supply of goods as well as rendering of services. It is an activity in the nature of works contract services which was included in the statute w.e.f. 1.6.2007 as a separate category under Section 65(105) sub-clause zzza. The Apex Court in the decision of L&T, has categorically laid down that such works contract cannot be levied to Service Tax for

the period prior to 1.6.2007. Accordingly, the Service Tax paid by the appellant for the activities performed during the period prior to 1.6.2007 will be eligible for grant of refund. The Original Authority is directed to consider the refund claim and grant the same, subject to all the other conditions specified in Section 11B of the Central Excise Act, 1944 are fulfilled.

6. The appeal is allowed.

[Dictated and Pronounced in the Open Court]

V. Padmanabhan
(Member Technical)

RS