IN THE CUSPTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:23.01.2017

ST/1010-1011,1024, 1023, 1118, 1119/2011 (DB)

[Arising out of Order-in-Original No.21/2011 dated 29.03.2011 in Appeal Nos.ST/1010, 1024,1023/2011, Order-in-Original No.20/2011 (Service Tax)-Commissioner dated 29.03.2011 in Appeal No.ST/1011/2011 passed by the Commissioner of Central Excise,Jaipur-I, Order-in-Original No.05-ST/PKJ/CCE/Adj/2011 dated 22.03.2011 in Appeal no.ST/1118/2011 and Order-in-Original No.06-ST/PKJ/CCE/Adj/2011 dated 22.03.2011 in ST/1119/2011, passed by the Commissioner of Central Excise, New Delhi]

ST/1010-1011/2011 (DB)

CCE, Jaipur-I Appellants

Vs.

M.M.Constructions Respondent
Kiran Udyog (Kiran Infra Engs. Ltd.)

ST/1024, 1023, 1118, 1119/2011 (DB)

Kiran Infra Enggs. Appellants
M.M. Constructions
Alcatel Portugal S.S. (Now known as Thales Portugal SA)

Vs.

CCE, Jaipur/Delhi Respondent

Appearance:

Rep. by Shri B.L. Narsimhan, Advocate for Alcatel Portugal S.S.
Shri P.K. Sahu, Advocate for Kiran Infra Enggrs.
Shri Jatin Mahajan, Advocate for M.M. construction
Rep.by Shri J.P.Singh, DR for the respondent
Rep by Shri Sanjay Jain, DR for the respondent.

Coram: Hon’ble Shri S. K. Mohanty, Member (Judicial)
Hon’ble Shri B. Ravichandran, Member (Technical)

Final Order No.50485-50490/2017

Per B. Ravichandran:

These six appeals are dealing with the similar set of facts and accordingly, they are taken up together for disposal.

2. Four appeals are filed by the assessees against confirmation of service tax demand for their activities of designing, manufacturing, supplying, installation, testing, commissioning of train control, signaling and telecommunication systems for Indian Railways/DMRC, Delhi.

3. Revenue filed 2 appeals with reference to finding in the impugned orders dropping the demands on the construction activities undertaken by the assessees for railways.

4. Briefly stated, the facts involved in the present case are that the assessees having entered into a contract with DMRC/Indian Railways for supply and erection of signal systems at various places. Admittedly, the contract had both supply of materials as well as rendering of service for identified considerations. Proceedings initiated against the assessees concluded by the impugned orders confirming service tax liability under the category of "Erection, Commissioning or Installation Service" and "Consulting Engineering Service" for providing such signal systems.

5. Ld. Counsels for the assessees submitted that the contracts in all these cases are composite in nature clearly involving supplying of materials as well as providing services to DMRC/Indian Railways. This fact has been admitted in the impugned orders. The confirmation of demands under "erection, installation and commissioning services" is on the ground that there is an identifiable component of service as per the contract. The Original Authority placed reliance on the decision of the Tribunal in the case of **BSBK Ltd. – 2007 (5) STR 124 (T-DE).** He held that the contract has to be held divisible if invoices indicate the amount charged for services and for supply of goods. He did not agree with the contention of the assessee/appellant that the contract is a composite, though the rates are

specified for goods and services separately. The service tax liability on "Consulting Engineer Service" is also with reference to the same composite contract.

6. Ld. Counsels submitted that in the face of admitted facts regarding composite nature of contract, the legal position, as laid down by the Hon'ble Supreme Court in the case of **Larsen & Toubro Ltd. -2015 (39 STR 913 (SC),** is clear that there is no tax liability on the appellant/assessee in respect of the considerations received pursuant to these composite contracts. Regarding the appeals filed by the Revenue, it was submitted that those contracts also deal with supply of materials as well as rendering of service. Post 1.6.2007 after introduction of tax entry for "works contract service", services rendered to railways were excluded by the statutory definition. As such, no service tax liability arises for assessees in any of these cases.

7. Ld. AR submitted that there are various contracts entered into by the assessees. Though all contracts had components of supply of materials as well as providing service, the Original Authority clearly restricted the service tax liability only to the service portion. However, ld. AR fairly stated that in case of composite contract, the law laid down by the Hon'ble Supreme Court in case of **Larsen & Toubro Ltd. (supra)** will apply.

8. We have carefully considered the submissions made by both the sides and perused the appeal records.

9. Admittedly, in all the cases before us the contracts for providing services of erection, installation and supply of materials either to DMRC/Indian Railways are composite in nature. This fact is not in dispute. In such situation, it is clear that there can be no tax liability on such contracts prior to 1.6.2007, on which date the

new tax entry "Works Contract Service" was introduced in the Finance Act, 1994. For the period post 1.6.2007, the services rendered to railways were excluded from the scope of the service tax liability under "Works Contract Service". The exclusion is with reference to works contract in respect of, among other things, railways, bridges, etc. DMRC – Metro Rail Project is also excluded under the category of railways. Reference can be made to the decision of the Tribunal in case of **ETA Engineering Pvt. Ltd. – 2016 (43) STR 547 (Tribunal-Delhi)** and in case of **Kumagai Skanska HCC Itochou Group Vs. CST, Delhi vide Final Order No.53833/2015 dated 28.12.2015.** As such, "Works Contract Service" provided to Indian Railways as well as DMRC are excluded for tax liability.

10. In view of the above discussions and the law laid down by the Hon'ble Supreme Court in case of Larsen & Toubro Ltd. (supra), the impugned orders confirming service tax liability on the appellants/assessees are legally not sustainable. Accordingly, the same are set aside. The appeals by the appellants/assessees are allowed. For the same reasons, the appeals filed by the Revenue are not sustainable and the same are dismissed.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.