IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. III

DATE OF HEARING : 19/01/2017.
DATE OF DECISION : 30/01/2017.

Service Tax Appeal No. 60293 of 2013

[Arising out of the Order-in-Appeal No. 104 (VC)ST/JPR-I/ 2013 dated 19/08/2013 passed by The Commissioner (Appeals), Central Excise Commissionerate, Jaipur.]

M/s Manukriti — Appellant

Versus

CCE & ST, Jaipur – I — Respondent

Appearance

Shri Karan Sachdeva, Advocate – for the appellant.

Ms. Neha Garg, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 50519/2017 Dated : 30/01/2017

Per. B. Ravichandran :-

This appeal is against order dated 21/08/2013 of Commissioner of Central Excise (Appeals – I), Jaipur. The appellants are engaged in providing services in connection with civil construction and commercial or industrial construction in terms of contract entered into with the client. The work is mainly relating to preparation of site for installation of ATM machines for various banks. The scope of the work involves Flooring, Granite Steps, Moulding on granite, Wall paneling, Partition, Wooden box, Fire extinguisher, Flower pot, Foot mat, Signage, Frame work, Cabling, Earthling, Wall construction, plastering and finish, External paving, Demolition Gypsum paneling, Shutter boxing, Painting, Porch construction, PCC, PCC filling, RCC lantern, Main cabling, Piping, Whitewash, Anti termite treatment etc. The Department entertained a view that the appellants are liable to service tax under the category of commercial or industrial construction service in terms of Section 65 (25b) of Finance Act, 1994. The period involved is 01/04/2005 to 31/03/2007. Proceedings initiated against the appellant resulting in confirmation of serviced tax demand of Rs. 13,45,029/-. Penalties under Section 76, 77 and 78 were also imposed. On appeal, vide the impugned order, the Commissioner (Appeals) upheld the original order.

2. The learned Counsel for the appellant submits that the works executed by the appellant are all on the basis of contracts involving supply of goods as well as providing service. The composite nature of work order has been admitted by the lower authorities and is also clearly established by the copies of bills submitted by the appellant. Learned Counsel submitted that they are registered with the Sales Tax Department and discharging VAT under the category of works contract. He further submitted that in terms of Hon'ble Supreme Court decision in **Larsen &**

Toubro Ltd. reported in **2015 (39) S.T.R. 913 (S.C.)** no service tax is leviable prior to 01/06/2007, when the new tax entry for 'works contract service' was introduced.

3. The learned AR though reiterated the findings in the impugned order fairly stated that composite works contract are liable to tax w.e.f. 01/06/2007 as held by Hon'ble Supreme Court.

4. We have heard both the sides and perused the appeal records. Admittedly the appellants are providing service under composite work order involving supply of goods as well as provision of service. We have perused some of the works orders to this effect. As such, in terms of the law laid down by the Hon'ble Supreme Court in **Larsen & Toubro Ltd.** (supra) no service tax liability can be confirmed on such composite works contract prior to 01/06/2007. The period involved in the present dispute is prior to 01/06/2007. Accordingly, we set aside the impugned order and allow the appeal.

(Order pronounced in open court on 30/01/2017.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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