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

Date of Hearing/Decision: 10.2.2017

Appeal No. ST/57010/2013-DB

(Arising out of Order-in-Original No. 14/COMR/ST/BPL-I/13 dated 7.3.2013 passed by the Commissioner. Customs & Central Excise, Bhopal)

Addl. GM,
M/s Bharat Heavy Electricals Ltd. — Appellant

Vs.

CCE, Bhopal — Respondent

<u>Appearance</u>

Shri Z.U. Alvi, Advocate - for the appellant

Shri Ranjan Khanna, D.R. - for the respondent

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. Ashok K. Arya, Member (Technical)**

Final Order No. 51898/2017

Per Justice Dr. Satish Chandra:

The present appeal has been filed against the order in original No. 14/2013 dated 7.3.2013.

2. The brief facts of the case are that the appellant assessee undertook execution of turnkey contracts for supplying machineries needed for setting up sub-stations for electric power and to install and commission the same. The appellant paid the excise duty on goods manufactured by them and supplied it. The appellant-assessee also supplied the same bought-out items. Further, the turnkey contract involved civil work for preparation of the project

site. On the value of such services, the appellant paid the service tax under the category of Commercial Construction Service after availing abatement of 67% of the gross value of services received. Moreover, the contract involved services of the Installation and Commissioning, for the gross value received for such services. The appellant paid service tax on the gross value of such services. But the department was of the view that the component of service in the contract could not have been vivisected into two services and abatement availed for value of one of the services. So after issuing the Show Cause Notice, such proposition was adjudicated by the impugned order. Being aggrieved, the appellant has filed the present appeal.

3. With this background, we have heard Shri Z.U Alvi, ld. Counsel for the appellant and Shri Ranjan Khanna, ld. DR and pursued the written submission; and bulky material.

4. From the record, it appears that the identical issue has already come up before the Tribunal in appellant's own case for the previous period (Final Order No. 610-613/2011 dated 11.8.2011), where the ratio laid down in the case of ***CCE Vs. BSBK Pvt. Ltd. -***. 2010 (253) ELT 522 (Tri.-LB) was considered, where it was observed that the turnkey project for supply of goods and services can be vivisected and subjected to tax separately.

5. Finally, the matter was remanded to the adjudicating authority to decide the issue in the light of the ratio laid down by the Larger Bench of the Tribunal (supra).

6. In pursuance to the direction of the Tribunal, the Commissioner has passed an order in original No. 42/2016 dated 31.5.2016, where the demand was dropped by following the ratio laid down by Larger Bench of the Tribunal (supra).

7. When the department has accepted the decision for the previous period in the same set of facts in the assessee's case, then there is no question to modify/sustain the present order. Hence, we set aside the impugned order and allow the appeal with consequential relief by following the ratio laid down by the Larger Bench of the Tribunal (supra).

8. In the result, the appeal filed by the appellant is allowed.

(Dictated & pronounced in open Court)

(Ashok K. Arya)
Member (Technical)

(Justice Dr. Satish Chandra)
President

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