CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing: 15.02.2017

Date of pronouncement: 02.03.2017

Service Tax Appeal No. 57383 of 2013

(Arising out of order- in-original No. Commissioner /RPR/ST/142/2012 dated 31.12.2012 passed by the Commissioner Central Excise, Raipur).

M/s Larsen & Toubro Limited Appellant

Vs.

CCE, Raipur Respondent

Appearance:

Sh. N. Venkataraman, Sr. Advocate with Sh. R. Satish, Advocate for the appellant

Dr. Neha Garg, AR for the Respondent

Coram:

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

Final Order No. 52063/2017

Per: **V. Padmanabhan**:

The appellant entered into a contract with M/s National Thermal Corporation Limited (NTPC) on 15.04.2004. The said contract was a composite one covering inland transportation, insurance, installation, commissioning and conducting guarantee tests for supply of stream generator and accessories for setting up Super Thermal Power Plant to NTPC at Bilaspur. The appellant imported certain goods at Visakhapatnam for ultimate supply to NTPC. The appellant awarded a work order dated 20.09.2004 to M/s Lee & Muirhead Pvt.

Ltd. for the service of customs clearance and transportation of the imported machines from the port to the project site of NTPC at Sipat. M/s Lee & Muirhead in turn sub-contracted the work of transportation of the goods to M/s Essemm Logistics, Vizag, who arranged for the transportation of goods to NTPC site and issued the consignment note in the name of NTPC as consignor as well as consignee. M/s Lee & Muirhead Pvt. Ltd. also issued delivery note in the name of NTPC.

2. Revenue took the view that the appellant is liable to pay service tax under GTA inasmuch as they paid the freight to M/s Lee & Muirhead Pvt. Ltd. for the services provided to NTPC. Accordingly, show cause notice dated 13.01.2011 was issued to the appellant which was followed by the impugned order dated 14.01.2013 in which service tax demand was confirmed on the appellant under the service of Goods Transportation Agency amounting to Rs.2,25,22,825/- alongwith payment of applicable interest and penalties under various sections of the Finance Act, 1994.

3. Aggrieved by the impugned order the present appeal has been filed.

4. With the above background, we have heard Sn. N. Venkataraman, Ld. Sr. Advocate on behalf of the appellant as well as Dr. Neha Garg, ld. AR for the Revenue.

5. The impugned order have been challenged by the appellant mainly on the following grounds:

(i) In terms of Notification No. 35/2004-ST dated 03.12.2004 the liability for payment of service tax for the service of goods transport agency has been transferred, on reverse charge basis, to the person liable for payment of freight i.e. either consignor or consignee. Since M/s Lee & Muirhead Pvt. Ltd. is the consignor of the goods and NTPC is the consignee, the liability for payment of service tax cannot be fastened on the appellant.

(ii) In terms of the contract between M/s Lee & Muirhead Pvt. Ltd. and the appellant, if the former paid the service tax and charged the same to the appellant, the latter would reimburse the same. However, the liability for service tax payment is not on the appellant since M/s Lee & Muirhead Pvt. Ltd. was the consignor of the goods.

(iii) They also relied upon the decision of the Tribunal in the case of ***Sumangalam Suitings (P) Ltd., vs. Commissioner of Central Excise, Jaipur-II – 2010 (19) STR 809 (Tri. Del.)*** wherein it has been held that the service tax is liable to be paid by the consignor who paid the transportation charges and not on the appellants who had engaged the transporters.

6. Ld. AR for the Revenue, on the other hand, supported the impugned order. The dispute in the present case is with reference to the liability for payment of service tax on the service of goods transport agency. The imported goods were to be transported from the Port i.e. Visakhapatnam to the site of NTPC i.e. Sipat. In terms of the turnkey contract between the NTPC and the appellant, it was the responsibility of the appellant to reach the machinery to the project site and further carry out installation and other works. The appellant sub-contracted the works relating to the customs clearance and transportation of the imported machines from the port to the project site to M/s Lee & Muirhead Pvt.

Ltd. who in turn engaged M/s Essemm Logistics, Visakhapatnam who carried out the actual transportation of the goods. The liability for payment of service tax under GTA has been stipulated under Rule 2(d)(v) of the Service Tax Rules, 1994 which defines "person liable for paying service tax as any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage" in relation to taxable service provided by a goods Transport Agency, where the consignor or consignee of goods is-

i) any factory registered under or governed under Factories Act, 1948

ii) any company formed or registered under company's Act 1956

iii) any corporate established by or under any law

iv) any society registered under society's registration Act, 1860

v) any cooperative society established by or under any law

vi) any dealer of excisable goods who is registered under Central Excise Act, 1944 or rules made thereunder.

vii) anybody corporate established or a partnership firm registered by or under any law.

From the above, it is evident that in the case of GTA service the levy of service tax has been shifted from the service provider to the person who is liable to pay freight where consignor or consignee of the goods is covered under any of the seven specified categories. From the agreement entered into between the appellant and M/s Lee & Muirhead Pvt. Ltd, we note that the latter will be entitled to the payment of Rs. 927/- per freight tonne which included Rs. 770/- for transportation and balance for other services. From this, it is evident that it is the appellant who pays freight for the transportation of the goods. In terms of the sub-contract executed with M/s Lee & Muirhead Pvt. Ltd., the latter have actually paid the freight charges to M/s Essemm Logistics who has actually handled the transportation of the goods. But such payment of freight is clearly made by M/s Lee & Muirhead Pvt. Ltd. only as the agent of the appellant which subsequently would be reimbursed by the appellant. It is not in dispute that the appellant being a public limited company is covered within one of the seven categories specified where the service tax liability will be on the consignor / consignee. Further, the freight is also borne by the appellant. There is no doubt that the consignee is M/s NTPC. Consequently, the liability for payment of service tax under GTA in this case falls on the appellant in terms of Rule 2(d)(v) of Service Tax Rules, 1994. For the reasons stated above, the liability for payment of service tax would fall on the appellant.

7. The appellant has vehemently claimed that the demand is time barred. They have also relied upon the decision of the Tribunal in the case of ***Sumangalam Suitings Pvt. Ltd.*** (supra). We have also gone through the decision cited by the appellant and note that the above decision was given in totally different facts and as such cannot be made applicable to the present facts of the case.

8. In view of the above discussions, we do not find any reason to interfere with the impugned order and hence the same is upheld and appeal is dismissed.

(Pronounced on 02/03/2017).

(Justice (Dr.) Satish Chandra) President	(V. Padmanabhan) Member (Technical)

Pant