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

Appeal No. ST/1467/2010-CU [DB]
[Arising out of Order-in-Appeal No. 100/BPL/2010 dated 01.07.2010, passed by the Commissioner of Central Excise, Bhopal]

M/s R.S. Bansal ....Appellant

Vs.

C.C.E, Bhopal ....Respondent

Appearance:
Sh. Sumit Khabhya, CA for the Appellant
Sh. Ranjan Khanna, DR for the Respondent

CORAM:
Hon'ble Shri S.K. Mohanty, Member (Judicial)
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 29.11.2016

FINAL ORDER NO. 56453 /2016-CU[DB]

Per V. Padmanabhan

The present appeal is against the Order-in-Appeal no. 65-ST dated 12.07.2010, passed by the Commissioner (Appeals), Bhopal. The dispute concerns the liability for payment of Service Tax for the services falling under "Construction Services" during the period 10.09.2004 to 31.03.2006. The Original authority confirmed the demand for payment of service tax amounting to about Rs 13 lakhs along with an order for payment of interest and penalties under the various sections. When the issue was challenged before the Commissioner (Appeals), the appellant failed to receive any favorable orders. Hence, the present appeal.

2. Heard Shri Sumit Khabhya, CA for the appellant as well as Shri Ranjan Khanna, ld. DR for the respondent.

3. The ld. Counsel for the appellant submitted that the nature of activity undertaken by the appellant was "Construction Services". Service tax for such services has been demanded under the category of "Construction Services" upto 15.06.2005 and thereafter under the category of "Commercial or Industrial Construction Services". He submitted that the Hon'ble Supreme Court in the case of **Commissioner of Central Excise & Cus., Kerala Vs. Larsen & Toubro Limited 2015(39) STR 913 (SC)** has categorically held that any activity involving transfer of property in goods as well as performance of service will be classifiable within the category of "Works Contract Services" after its introduction in the statute w.e.f 01.06.2007. The Apex Court further held that such activities will not liable to payment of service tax under any other category for the period upto 31.05.2007. He submitted that the entire demand in the present case is for the period prior to 31.05.2007 and hence is liable to be set aside.

4. The Ld. DR supports the impugned order.

5. We have heard both sides and perused the record. The activity undertaken by the appellant is "Construction Service". Such activity involves both transfer of property in the goods as well as rendering services. Consequently, in the light of the categorical pronouncement of law by the Apex Court in the L&T case (Supra), we are of the view that the service tax demand in the present case cannot be sustained, since the entire demand is prior to 01.06.2007.

6. In view of the above discussions, the impugned order is set aside and appeal allowed with consequential relief.

[Dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

V. Padmanabhan
Member (Technical)

Ritu S.