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 : 06/03/2017.
DATE OF DECISION : 06/03/2017.

Service Tax Appeal No. 397 of 2012

[Arising out of the Order-in-Original No. 02/2012 (ST) – Commissioner dated 09/01/2012 passed by The Commissioner, Central Excise Commissionerate, Jaipur.]

M/s Jagdish Prasad Agarwal Appellant

Versus

CCE, Jaipur – I Respondent

Appearance

S/Shri Manish Gaur and Rachit Jain, Advocates – for the appellant.

Shri Ranjan Khanna, 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. 52344/2017 Dated : 06/03/2017

Per. S.K. Mohanty :-

This appeal is directed against the impugned order dated 09/01/2012 passed by the Commissioner of Central Excise & Service Tax, Jaipur.

2. The appellant is a service provider and is registered with the Service Tax Department for providing different category of services. During the period 16/06/2005 to 27/07/2009, the

Department has confirmed service tax demand of Rs. 2,85,18,695/- under Management, Maintenance or Repair Services and Rs. 48,99,741/- under Commercial or Industrial Construction Service.

3. The learned Advocate appearing for the appellant submits that the Services provided during the period 16/06/2005 to 27/07/2009 were in connection with maintenance and repair of roads, which were specifically exempted from payment of service tax in terms of the special provisions contained in Section 97 of the Finance Act, 1994. With regard to construction of Toll Plaza and Lanes, the submissions of the learned Advocate are that such activities form the integral part of construction of road, which is specifically excluded from the purview of Commercial or Industrial Construction service as per Clause 25 (b) of Section 65 ibid. To support his stand that service tax is not leviable on such service, the learned Advocate relied on the judgment of the Larger Bench of this Tribunal in the case of **Lanco Infratech Ltd. vs. CC, CE & ST, Hyderabad** reported in **2015 (38) S.T.R. 709 (Tri. – LB)**.

4. On the other hand, the learned DR appearing for the respondent reiterated the finding recorded in the impugned order.

5. Heard both the sides and examined the case records. We find that services provided by the appellant in respect of maintenance and repair of roads during the period 16/06/2005 to

27/07/2009 were exempted from payment of service tax under Section 97 ibid. Since, the said statutory provision mandates that no service tax shall be levied on management, maintenance or repair of roads, we are of the view that service tax demand of Rs. 2,85,18,695/- confirmed by the lower authority will not sustainable. Commercial or Industrial Construction service provided in respect of roads are specifically excluded from the purview of levy of service tax in terms of clause (25b) of Section 65 ibid. It is an admitted fact on record that the demand of Rs. 48,99,741/- is towards construction of Toll Plaza and Lanes, which are in relation to the service provided in respect of – roads. The phase "in respect of roads" contained in clause (25b) of Section 65 ibid has a wider connotation and bears the widest possible scope and may be taken to mean "for the provision of". Thus, the service tax demand on Toll Plaza and Lanes will not be sustainable in this case.

6. In view of above, we do not find any merit in the impugned order. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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