IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision: 17.03.2017

Service Tax Appeal No.55904/2013 (DB)

[Arising out of Order-in-Original No.01/COMMR/ST/BPL/13 dated 15.01.2013 passed by the Commissioner of Customs & Central Excise, Bhopal]

M/s.Bhopal Switchgear Pvt.Ltd. Appellant

Vs.

CCE, Bhopal Respondent

Appearance:

Rep. by Shri Z.U.Alvi, Advocate for the appellant.
Rep. by Shri R.K. Misra, DR for the respondent.

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

Final order No.52468/2017

Per B. Ravichandran:

The appeal is against order dated 15.1.2013 of Commissioner of Central Excise, Bhopal. The appellants are engaged in the manufacture of Control Panel and were also engaged in providing various taxable services. The dispute in the present appeal relates to two sets of contracts entered into by the appellant with IRCON International, Jhansi/Bhopal. The appellant carried out construction of external/internal works for electrical sub-stations and also laying over head cables along with various other connected activities. The Revenue entertained a view that the activities carried out by the appellant are liable to be taxed under the category of "Erection, Commissioning or Installation" services in terms of Section 65(39a) of Finance Act, 1994. The proceedings initiated against the appellant concluded in the impugned order. The Original Authority confirmed service tax demand of Rs.39,24,724/-. He also imposed a penalty of equivalent amount under Section 78 and further penalties under Section 76 and 77 of the Finance Act, 1994.

2. Ld. Counsel appearing for the appellant submitted mainly on the following points:-

(a) The contracts, which are subject matter of dispute in this appeal, are of composite nature having supply of goods alongwith provision of service while executing the work. Such composite work contract cannot be taxed as a simple service of erection, commissioning and installation. In terms of the decision of the Hon'ble Supreme Court in the case of **Larsen & Toubro Ltd. – 2015 (39) STR 913 (SC),** no tax liability will arise on the appellant for the period prior to 1.6.2007.

(b) The demand for extended period is not sustainable in the present case. All the contracts are for executing work relating to Married Accommodation Project for Defence personnel. They have been specifically advised by IRCON, who is the main contractor for Defence Ministry, that after consulting with the Service Tax Department, it was clarified that no service tax liability will arise in connection with the work on these accommodations of Defence Ministry. Hence, the appellants had bona fide belief regarding non-liability to tax. Even otherwise, the composite works contract held to be liable for service tax w.e.f. 1.6.2007 was settled as a legal position only after the decision of the Hon'ble Supreme Court cited above. As such, the demand cannot be confirmed for extended period. Accordingly, no penalties also can be imposed on the appellant.

(c) The demand in respect of four contracts received by their Jhansi Branch Office cannot be confirmed against Bhopal Office. The jurisdiction of Bhopal Commissioner does not extent to Jhansi in terms of the notification issued under Rule 4(2) of the Service Tax Rules, 1994.

3. Ld. AR reiterated the findings in the impugned order. Regarding the jurisdiction, he submitted that the appellants having registered office at Bhopal, are executing the work orders at Jhansi also. The said work order was carried out through their Jhansi office or the billing was done only from Jhansi Office will not affect on the jurisdiction to demand or to pay service tax. There is no registration by the Jhansi Branch Office with the Department. As the registered office is at Bhopal and the contracts were executed as a corporate legal entity, the location of branch will not alter the jurisdiction.

4. We have heard both the sides and perused the appeal records.

5. On the first issue regarding the tax liability of the appellant in respect of composite works contract, we note that based on the terms of the contracts, it is clear that these contracts are of composite nature involving both supply of materials as well as provisions of service. In such situation, these activities cannot be categorized as simple service contract to be subjected to service tax prior to 1.6.2007. In view of the law laid down by the Hon'ble Supreme Court in **Larsen**

& Toubro Ltd. (supra), there is no liability for the appellant to pay service tax on these composite works contract prior to 1.6.2007. On the second issue regarding the sustainability of the demand for extended period, we note that there is ground for the appellant to have bonafide belief regarding non-liability as to service tax. They have been advised, based on the clarification by the Department, that the service tax does not arise for construction of married accommodation for personnel of Defence Ministry. Further, the legal position regarding service tax liability of composite works contract has been settled by the decision of the Hon'ble Supreme Court only. There were disputes and varying decisions by the judicial authorities before that time. Accordingly, we hold that there is no ground for invoking demand for extended period in the present case. Accordingly, the penalties imposed on the appellant are to be held as non-sustainable.

6. On the question of jurisdiction, we agree with the Revenue. The appellants are having registered office at Bhopal and they are registered with the Service Tax Department at Bhopal. They do have a branch office at Jhansi but were not registered in Jhansi. The contracts were executed in the name of registered office and work executed by the appellant. The Jhansi office dealt with the billing or other connected activities does not have impact of shifting of jurisdiction regarding the appellant's liability as a party to the contract of service. In this connection, we also refer to the decision of the Tribunal in **CCE, Kolhapur Vs. Helios Food Additives Pvt. Ltd. – 2011 (24) STR 721 (Tribunal-Mumbai)**. As such, the question of jurisdiction has been correctly dealt with by the lower authorities and we find no merit in the contention of the appellant.

7. In view of the above discussion and analysis, we find that the liability of the appellant to service tax shall be restricted to the normal period under Works Contract Service. The same shall be worked out by the jurisdictional officers based on the documents and the bills submitted by the appellant. The penalties imposed on the appellant are set aside. The appeal is disposed of in the above terms.

[Order dictated & pronounced in open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.