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 : 13/04/2017.
DATE OF DECISION : 13/04/2017.

Service Tax Appeal No. 50450 of 2014

[Arising out of the Order-in-Appeal No. 162/S.Tax/D-II/13 dated 29/07/2013 passed by The Commissioner of Central Excise (Appeals), New Delhi.]

M/s H.L.R. Engineering & Contractors Appellant

Versus

CST, Delhi Respondent

Appearance

Shri Om Prakash, C.A. – for the appellant.

Shri Sanjay Jain, 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. 52937/2017 Dated : 13/04/2017

Per. B. Ravichandran :-

The appeal is against order dated 29/07/2013 of Commissioner (Appeals), Delhi – I. The appellant are engaged in the construction of buildings. The dispute in the present appeal relates to their tax liability under two categories, namely construction of complex services and construction of industrial or commercial construction service. The lower Authorities confirmed service tax liability of Rs. 31,25,793/- for the period 2005-2006 to 2009-2010 and Rs. 14,03,464/- for the period 2010-2011. Penalties were also imposed on the appellant.

2. The learned Counsel appearing for the appellant submitted that the service tax demand confirmed against them is not legally sustainable on the following grounds :-

(a) during the period 2005-2006 to 2006-2007 they have constructed residential complex in 10 plots as per the agreement with M/s COSMOS. These are in the nature of individual buildings, each having 3 units. Reliance was placed on the terms of contract as well as photograph of the said building. Reliance is also placed on the decision of the Tribunal in **Macro Marvel Projects Ltd. vs. CST, Chennai – (2008) 17 STT 479 – Chennai (CESTAT)**.

(b) During the year 2007-2008 to 2010-2011 the work executed by them as sub-contractor is with reference to residential buildings only and not with reference to industrial or commercial construction. As such, the service tax confirmed under the category of commercial or industrial construction service is not sustainable.

3. During the course of argument, the learned Counsel fairly conceded that these issues were not agitated before the lower Authorities. However, these being facts, relevant to apply the correct legal provisions, he requested for setting aside the demand against them.

4. The learned AR submitted that the claim of the appellant regarding individual nature of the buildings as well as lack of common facilities, as stipulated in the definition of tax entry has to be verified. No conclusion can be drawn based on photographic evidence. The fact that whether the appellant is one of the many contractors in the project, to develop a common residential complex requires to be examined. Regarding residential nature of building constructed by the appellant as sub-contractor, having been subjected to service tax under the category of commercial or industrial construction service, the learned AR submitted that this aspect also requires cross-verification regarding the nature of the building and the agreement with the main contractor. No detailed finding was recorded by the lower Authorities as no such submissions were made. The learned AR relied on the decision of **Madhukar Mittal vs. CCE, Panchkula** reported in **2015 (40) S.T.R. 969 (Tri. – Del.)**.

5. We have heard both the sides and perused the appeal records. Admittedly, certain essential facts which are relevant to arrive at the correct decision were not examined by the lower Authorities. The decision was based on certain other issues. As accepted by the appellant certain factual aspects having implication regarding tax liability were not placed properly before the lower Authorities. This could have resulted in analysis of such facts for a proper decision. Accordingly, we find it fit and proper to set aside the impugned order and to remand the matter to the Original Authority for a fresh decision. The appellant shall file all

the connected evidence in support of their claim. We have not made any observation regarding merit of the case. The Original Authority shall examine all the facts to decide afresh. The appeal is allowed by way of remand.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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