CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing: 21.06.2017

Appeal No. ST/1296/2011-CU[DB]
[Arising out of the Order-in-Appeal No. 17/ST/RPR/I/2011 dated 18.05.2011, passed by the Commissioner of Central Excise (Appeals), Raipur]

M/s. B.P. Agarwal … Appellant

Vs.

CCE Raipur … Respondent

Appearance:

Present Ms. Asmita Nayak, Advocate for the appellant
Present Shri Ranjan Khanna, DR for the respondent

Coram: **Hon'ble Mr. D.M. Misra, Member (Judicial)**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

FINAL ORDER No. 54247 /2017

Per D.M. Misra:

This is the appeal filed against the order no. 17/ST/RPR/I/2011 dated 18.05.2011, passed by the Commissioner of Central Excise (Appeals), Raipur.

2. Briefly stated the facts of the case are that the appellant during the period from **17.08.2005 to 05.11.2008** provided taxable services under the category of "construction of complex services" but had not paid the service tax. Consequently, show cause notice was issued to them for recovery of the tax amount of Rs.6,96,178/- with interest and proposal for penalty. On

adjudication, the demand was confirmed with interest and equal amount of penalty. Aggrieved by the said order, the appellant filed the appeal to the Ld. Commissioner (A) who in-turn upheld the order of the adjudicating authority. Hence, the present appeal.

3. The Ld. Advocate for the appellant submits that the major portion of the demand relates to the period prior to 01.06.2007 and since they have discharged local tax on works contract services, therefore, service tax on works contract prior to 01.06.2007 cannot be levied in view of the judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Central Excise Vs. Larsen & Toubro Ltd. 2015 (39) STR 913 (SC).***

4. Per contra, the Ld. AR for the Revenue, even though did not dispute that service tax cannot be levied on works contract for the period prior to 01.06.2007, but submitted that nowhere on record the appellant had placed evidence of providing works contract services during the said period. He prays that the matter may be remanded to the adjudicating authority for ascertaining the said facts.

5. We find force in the contention of the Ld. AR for the Revenue. On going through the records, we do not find that the appellant had made a categorical plea that the necessary local levy on works contract has been paid by them; and, the services of construction of residential complex rendered by them be treated as 'works contract services'. Therefore, to examine the said claim of the appellant, the matter needs to be remanded to

the adjudicating authority to decide the matter afresh after taking into consideration the facts on record and the evidences that would be filed by the appellant in support of their claim, keeping in view the principle of law laid down in the case of ***Larsen and Toubro Ltd.*** All issues are kept open.

6. Appeal is allowed by way of remand.

[Operative part of the order Pronounced in the open court]

(Ashok K. Arya)
Member (Technical)

(D.M. Misra)
Member (Judicial)

Bhanu