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

Date of Hearing/Decision:7.06.2017

Service Tax Appeal No.985/2011-DB

[Arising out of Order-in-Appeal No.IND/381 & 382/2010 dated 18.11.2010 passed by the Commissioner (Appeals), Central Excise Indore (M.P.)]

M/s. Kushwah Electric Works — Appellants

Vs.

CCE, Indore — Respondent

<u>Appearance</u>:

Rep. by Shri Abhisek Jaju, Advocate for the appellant.
Rep. by Shri Amresh Jain, DR for the respondent.

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

Final Order No.54782/2017

<u>Per S.K. Mohanty:</u>

This appeal is directed against the impugned order dated 18.11.2010 passed by the Commissioner (Appeals), Central Excise, Indore, upholding the adjudicated demand under taxable category of "Commercial or Industrial Construction Service" .

2. Ld. Advocate appearing for the appellant submits that various work orders issued by the clients described the scope of work to be executed by the appellant, which included *interalia*, the activities of construction, supply of material/ labour etc. Thus, he submits that since the activities undertaken by the appellant pursuant to the work order issued by the clients are composite in nature, such service provided should be classified under the work contracts service. Further, since the work contract service was brought into the taxing net only w.e.f. 1.6.2007, the

appellant should be liable to pay service tax under such category of service only from 1.6.2007.

3. On the other hand, the ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and peruse the records.

5. The fact is not under dispute that the activities undertaken by the appellant pursuant to the work orders are composite in nature, involving both execution of the assigned task and for supply of material. Thus, the work executed should fall under the taxable service of works contract, which was leviable to service tax w.e.f 01.06.2007. However, in the present case, since the demand has been confirmed under the taxable category of “Commercial or Industrial Construction Services” and part of the demand, as already paid by the appellant under the said category of service, we are of the view that the amount already paid should be adjusted against the works contract service provided by the appellant from 1.6.2007 to 31.03.2008.

6. Accordingly, after setting aside the impugned order, we remand the matter back to the Original Authority for computing the service tax liability, which is required to be paid by the appellant under work contract service. The availability of the composite scheme or abated rate of tax should also be considered by the Original Authority while computing the fresh demand.

7. Considering the fact that the issue of taxability of works contract service was highly contentious and the same was resolved by the judgement of Hon’ble Supreme Court in the case of **CCE Vs. Larsen & Toubro Ltd. – 2015 (39) STR 913 (SC)**, we are of the view that the provisions of Section 80 of the Finance Act,

1994 can be invoked in the present case for non-imposition of penalties under Section 76 and 78 ibid. Accordingly, the penalty imposed on the appellant is set aside. Cross appeal of Revenue stands disposed of.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.