IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. III

Service Tax Appeal No. ST/50155/2014-[DB]

[Arising out of Order-In-Appeal No. 73-ST/APPL/DLH-IV/2013 dated 23.09.2013 passed by Commr. (Appeals), Faridabad]

M/s. Bhavan Enterprises ...Appellant

Vs.

C.C.E. Delhi …Respondent

Appearance:
Mr. Rakshit Verma (Advocate) for the Appellant
Mr. Ranjan Khanna (DR) for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon’ble Mr. B. Ravichandran, Member (Technical)

Date of Hearing/Decision.03.07.2017

Final Order No. 55162/2017

Per S.K. Mohanty:

This appeal is directed against order-in-appeal dated 23.09.2013 passed by the Commissioner (Appeals), Service Tax, New Delhi, upholding the adjudged demand confirmed under taxable category of erection, commissioning and installation service.

2. The Ld. Advocate appearing for the appellant submits that the job assigned as per the work order issued by Delhi Metro Rail Corporation Ltd. involves both execution of the assigned task of work as well as for supply of goods. He submits that since the contract is of composite in nature, the same should be classified as works contract service. It is his submission that since the period of dispute is before 01.06.2017, the service tax demand confirmed against the appellant will not be sustainable.

3. The Ld. DR for Revenue reiterates the findings recorded in the impugned order.

4. Heard both side and perused the records.

5. We find from the available records that the contractee M/s Delhi Metro Rail Corporation Ltd. has awarded the contract to the appellant for both execution of work as well as for supplying of the goods. Further, the contractee has also deducted tax at source from the bills raised by the appellant for execution of works contract under the State VAT law. Since, the nature of work performed by the appellant was composite in nature, the same confirmed to works contract service. Admittedly in this case, the service were provided prior to 01.06.2007, thus in our view, the services tax demand cannot be confirmed under the category of erection, commissioning and installation service.

6. Therefore, after setting aside the impugned order, we allow the appeal in favour of the appellant.

(Dictated and pronounced in the open court)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Neha