IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 14.7.2017

Appeal No. ST/389/2011 -DB

(Arising out of Order-in-Original No. 12/SJS/CST(Adj.)/2010 dated 14.12.2010 passed by the Commissioner of Service Tax (Adjudication), New Delhi)

Samsung C & T India Pvt. Ltd. Appellant

Vs.

CST, Delhi Respondent

Appearance

Shri S. Sunil, Advocate - for the appellant

Shri Amresh Jain, D.R. - for the respondent

CORAM: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. Ashok K. Arya, Member (Technical)

Final Order No. 55398/2017

Per Justice Dr. Satish Chandra:

The present appeal is filed against the Order-in-Original No. 12/2010 dated 14.12.2010.

2. The brief facts of the case are that the Delhi Metro Rail Corporation (DMRC) entered into a civil contract dated 3.4.2001 with M/s International Metro Civil Contractors (IMCC), which was itself a joint venture comprising Dyckerhoff & Widmann AG, Larsen & Toubro Ltd., Shimizu Corporation, Ircon International Ltd. and the appellant. The said contract required the IMCC to design and construct the rail based Mass Rapid Transport System, including

tunnel ventilation and station air-conditioning and ventilation. Clearly, therefore, the tunnel ventilation and station air-conditioning and ventilation was an integral part of the activity to be performed by the IMCC under the above mentioned turn-key civil contract dated 3.4.2001 entered into between DMRC and IMCC. DMRC had tendered for and awarded to IMCC, the turnkey Civil Contract for the Line MCIB of the Mass Rapid Train Corridor in New Delhi which inter alia included the tunnel ventilation and station air-conditioning of the six underground stations as an integral part of the turnkey civil contract. Samsung Corporation, Korea which was a partner and member of IMC, the JV awarded the turnkey contract, was having the requisite experience and technical expertise to execute the tunnel ventilation and air-conditioning works and accordingly, as a member of IMCC, the JV, Samsung Corporation was responsible for undertaking and executing the tunnel ventilation and air-conditioning works for the metro stations for DMRC as an integral part of the turnkey civil contract for Line MCIB. For providing these services, the department has demanded the service tax. Being aggrieved the appellant has filed the present appeal.

3. With this background, we have heard Shri S. Sunil, ld. Advocate for the appellant and Shri Amresh Jain, ld. DR. We also perused material available on record.

4. About the works contract, the matter has come up before the Hon'ble Supreme Court in the case of ***CCE Vs. L&T*** – (2016) 1-SCC-170, where it was observed that :

> "23. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the vary language of Section 65(105) which defines "taxable service" as "*any service provided*". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contract, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract.
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> 24. In fact, by way of contrast, Section 67 post amendment (by the Finance Act, 2006) for the first time prescribes, in cases like the present, where the provision of service is for a consideration which is not ascertainable, to be the amount as may be determined in the prescribed manner."

5. Accordingly, prior to the cut of date 1.6.2007, no service tax is chargeable on the works contract if it is a works contract. From the impugned order, it is not clear whether the appellant was

performing the works contract or not. Hence, both the parties have agreed that the issue can be restored to that adjudicating authority.

6. In view of the above, we set aside the impugned order and remand the matter to the adjudicating authority to decide the issue whether it was a works contract before 1.6.2007 or not and thereafter decide the issue in the light of the ratio laid down by Supreme Court decision (supra). However, after 1.6.2007, the service tax liability is leviable even under works contract. When liability is leviable then the adjudicating authority is directed to compute the tax liability and raise the demand.

7. It is expected that necessary opportunity of being heard will be provided to the appellant. Fresh evidence, if need be, may be admitted as per law.

8. In the result, appeal filed by the appellant is allowed by way of remand.

(Dictated & pronounced in open Court)

(Ashok K. Arya) Member (Technical)	(Justice Dr. Satish Chandra) President

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