IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –III

Service Tax Appeal No.ST/50091/2014-CU [DB]

[Arising out of Order-in-Original No.134/GB/2013 dated 30.09.2013 passed by the Commissioner of Service Tax, New Delhi]

M/s.Narayan Dass R. Irani …Appellant

Vs.

C.S.T., Delhi-I … Respondent

Service Tax Appeal No.ST/50757/2014-CU [DB]

[Arising out of Order-in-Original No.134/GB/2013 dated 30.09.2013 passed by the Commissioner of Service Tax, New Delhi]

C.S.T., Delhi-I …Appellant

Vs.

M/s.Narayan Dass R. Irani … Respondent

Present for the Appellant : Mr.S.K. Sarwal, Advocate.
Present for the Respondent: Ms. Neha Garg, D.R.

Coram:
HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing / Decision : 01.08.2017

FINAL ORDER NO. 55721-55722/2017

PER: B.RAVICHANDRAN

Both Revenue and the assessee are in appeal against the order dated 30.09.2013 of Commissioner, Service Tax, Delhi. The appellant-assessee is engaged in construction of residential units for Engineering Projects India Ltd. in terms of contract. Proceedings were initiated against the demand and recovery of Service Tax for their activities under the category of "construction of Complex Service" in terms of Section 65 (105) (zzzh) of Finance Act, 1994. Show cause notice issued to the appellant - assessee demanded Service Tax liability of Rs.62,70,287/- for the period 2006-07 and 2007-08. The case was adjudicated resulting in impugned order. The original authority confirmed a Service Tax demand of Rs.7,44,940/- for the period 01.04.2006 to 20.10.2006 considering the activity as 'construction of complex service'. Equal amount of penalty was also imposed on the appellant under Section 78 with a further penalty of Rs.5,000/- under Section 77 of the Finance Act, 1994.

2. The Revenue is aggrieved by this order and filed this appeal on the ground that the taxable value considered by the original authority is wrong. The amount realized during the taxable period has not been properly considered by the original authority. When the income for the previous years was shown realized in mercantile system, it does not become the income for the particular year. Further, the original authority erred in deducting the amount paid by the appellant – assessee to the sub-contractors. Relying on the provisions of Section 67, the

Revenue contended that the original authority had fell in error in calculating the tax liability.

3. The appellant – assessee preferred appeal against the impugned order on the ground that their contract is involving supply of goods liable to VAT and also provision of service. The contract is a typical works contract and there is no dispute on this fact. The contract work began on 06.12.2001 and was actually completed on 20.10.2006. These facts are also not in dispute. The appellant – assessee also submitted a certificate issued by the service recipient containing the full details about the contract, duration, amount etc. The ld. Counsel for the appellant – assessee submitted that considering these facts, the services rendered by the appellant – assessee is not at all liable to Service Tax during the material period, which is prior to 01.06.2007. It is only on 01.06.2007, a specific tax entry for 'works contract service' has been introduced in the Finance Act, 1994 and contract executed by the appellant – assessee falls under that tax entry. Relying on the decision of Hon'ble Supreme Court in Larson and Toubro Ltd. – (39) STR 913 (S.C.), the appellant – assessee pleaded for setting aside the demand confirmed in the impugned order.

4. We have heard both sides and perused the appeal records. The admitted facts regarding the nature of contract

the duration of contract are not in dispute. As the contract is composite in nature with the supply of goods and provision of service and has been executed prior to 01.06.2007, we find the same is not liable to Service Tax during the material period. Following the ratio laid down by the judgement of Supreme Court in Larson and Toubro (Supra), we find that the tax liability against the appellant will not arise in this case. Accordingly, we set aside the impugned order and allow the appeal filed by the appellant assessee.

5. In view of above reasons, the appeal filed by the Revenue is dismissed.

[Dictated and pronounced in the open Court]

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

Anita