In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.ST/267/2012(DB)

(Arising out of Order-in-Original No.66/2011(ST) dated 23.11.2011 passed by Commissioner-I of Customs & Central Excise, Jaipur-I)

M/s Dream Decor …Appellant

Vs

CCE Jaipur-I …Respondent

Appearance:
Present for the Appellant : Shri Alok Kothari, Advocate
Present for the Respondent : Ms Neha Garg, DR

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

Date of hearing: 18.05.2017
Dt. of pronouncement:18.08.2017

Final Order No.55921/2017

Per V.Padmanabhan,

The present appeal is against the Order-in-Original No.66/2011 dated 23.11.2011. The appellant is engaged in rendering services falling under Erection, Commissioning and Installation Services as defined under Section 65(105) (zzd) of the Finance Act, 1994. During the period 01.04.2005 to 31.10.2008, the appellant provided services relating to petrol pumps for M/s HPCL. Department issued SCN dated 22.10.2010 demanding of service tax amounting to Rs.55,44,587/- for such services. The adjudicating authority, vide the impugned order, confirmed the demand of service tax amounting to Rs.12,51,938/- along with interest and penalties under different sections of the Finance Act, 1994. Aggrieved by the impugned order, the present appeal has been filed.

2. With the above background, we heard Shri Alok Kothari, ld Counsel representing the appellant as well as Dr Neha Garg, ld DR representing the Revenue.

3. After hearing both parties and perusal of record, it appears that the services rendered by the appellant have been classified by the adjudicating authority under 'works contract service' falling under Section 65 (105) (zzzza) w.e.f. 01.06.2007. Service Tax has also been demanded under the above category by giving the benefit of composition scheme. However, for the period prior to 01.06.2007, the services rendered by the appellant have been classified partially under Commercial or Industrial Construction Service and partially under Erection Commissioning and Installation Service.

4. The Hon'ble Supreme Court of India in case of Commissioner of C.Ex. & Cus. Kerala Vs Larsen & Toubro Ltd , 2015(39) S.T.R. 913 (S.C) has categorically held that services which involve rendering of service as well as supply of material involved in such work were to be classified only under the 'works contract service' w.e.f. 01.06.2007 when such services were included in the statute. It has further been hold that by the Apex Court that such services cannot be classified under any other category prior to 01.06.2007.

5. Since the adjudicating authority has clsassified the services rendered by the appellant under WCS w.e.f.01.06.2007, such services cannot be charged to service tax under any other category for the period prior to this date.

6. By following the decision of the Apex Court in the L&T case, we set aside the demand for the period upto 31.05.2007 and uphold the demand amounting to Rs.3,17,863/- for the period from 01.06.2007. The appellant will also be liable to pay interest in terms of Section 75 However, we set-aside the penalties imposed on the appellants by taking recourse to Section 80 of the Finance Act, 1994, keeping in view of the facts that classification of services under WCS came to be finally decided only with the issue of Apex Court order in the L&T case.

(Pronounced in Court on 18.08.2017)

(S.K. Mohanty)
Member (Judicial)

(V.Padmanabhan)
Member(Technical)

pcs