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

Date of Hearing/Order: 19.9.2017

Appeal No. ST/143/2011-DB

(Arising out of Order-in-Appeal No. 111/BPL/2010 dated 13.8.2010 passed by the Commissioner (Appeals), Customs, Central Excise & Customs, Bhopal)

Ambika Paints Ply & Hardware Store — Appellant

Vs.

CCE, Bhopal — Respondent

<u>Appearance</u>

Shri Sandeep Mukherjee, Advocate - for the appellant

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

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

Final Order No. 56686/2017

Per B. Ravichandran :

The appeal is against the order dated 13.8.2010 of Commissioner (Appeals), Bhopal. The appellants are engaged in construction activity during the material time i.e. from 16.6.2005 to 31.7.2006. They were engaged in the construction of residential houses for various clients. They were subjected to service tax under construction of complex service. The lower authorities confirmed the service tax liability of Rs.3,89,279/-. Penalties of equivalent amount were also imposed under Section 76 & 78 with further penalty of Rs.1000/- under Section 77.

2. The ld. Counsel submitted that by a specific amendment in the tax entry in 2010, the construction of residential complex was subjected to tax only in case any amount is received prior to the issue of completion certificate by the competent authorities. It is further submitted that initially when they were receiving consideration from the clients they charged and paid service tax. Consequent on the issue of Board's Circular dated 1.8.2006 regarding tax liability is on the builder and not the promoter, they stopped charging the service tax. The ld. Counsel further submitted that service rendered by them are composite in nature involving supply of materials and provisions of service. Such composite contract are not liable to tax prior to 1.6.2007 in terms of the law laid down by the Hon'ble Supreme Court in the case of ***CCE Vs. L&T*** – (2016) 1-SCC-170. He submitted that these aspects were not examined by the lower authorities or were not available for consideration. He further submitted that the tax liability on construction service has been subject matter of substantial litigation during the material time involving clarifications as well as statutory amendments. As such, he also contested the demand on limitation also.

3. The ld. DR reiterated the findings of the lower authorities. He submitted that many of the issues now raised by the appellant

regarding nature of contract etc. has not been submitted before the lower authorities.

4. We have heard both the sides and perused the appeal records.

5. We note that the submissions of the appellant are based on the nature of contract and also judicial pronouncements, many of them are after issue of the impugned order. Accordingly, we deem it fit and proper that these factual matters along with the law laid down by the Hon'ble Supreme Court in the case of ***L&T*** (supra) requires examination by the original authority. Accordingly, after setting aside the impugned order we remand the matter back to the original authority for a decision afresh. The appellant shall be given adequate opportunity to submit their case with supporting evidence.

6. The appeal is allowed by way of remand.

(Dictated & pronounced in open Court)

(S.K. Mohanty) Member (Judicial)	(B. Ravichandran) Member (Technical)

RM