CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 28.09. 2017

S. T. Appeal No. 1016 of 2011
(Arising out of order-in-original No. 04/2011/ST/JPR-II-Commissioner dated 15.03.2014 passed by the Commissioner, Central Excise, Jaipur).

M/s Gurjar Enterprises Appellant

Vs.

CCE, Jaipur-II Respondent

AND

S. T. Appeal No. 961 of 2011
(Arising out of order-in-original No. 04/2011/ST/JPR-II-Commissioner dated 15.03.2014 passed by the Commissioner, Central Excise, Jaipur).

CCE, Jaipur-II Appellant-Revenue

Vs.

M/s Gurjar Enterprises Respondent-assessee

Appearance:

Ms. Rinky Arora, Advocate for the assessee
Sh. Ranjan Khanna, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order Nos. 56874 – 56875/2017

Per: **B. Ravichandran**:

Both Revenue and the assessee are in appeal against the impugned order dated 15.03.2011. The appellant-assessee are engaged in construction and erection activities in terms of contract entered into with oil companies. The dispute in the present case, covering the period 01.04.2014 to 31.03.2009, is with reference to the service tax liability of the appellant-assessee in respect of various activities carried out under these contracts. The Revenue held a view that the appellant-assessee is liable to service tax for these activities and accordingly issued a show cause notice cum demand in October, 2009 to recover service tax amount of Rs. 1,01,50,213/-. The case was adjudicated resulting in the impugned order. There was a corrigendum to the impugned order also. The original authority confirmed service tax liability of the appellant-assessee under Installation and Commissioning Service for the period 01.04.2004 to 09.09.2004 and under Commercial and Industrial Construction Service from 10.09.2004 to 31.03.2009.

2. The appellant-assessee is aggrieved by the said order filed the appeal. Ld. Counsel for the appellant-assessee submitted that the proposal in the show cause notice is vague without identifying the exact service under which the Revenue seeks to demand service tax. The original authority proceeded to demand in different two categories for different period for the same set of activities. She submitted that such action is not legally tenable. The service can be either Installation or Commissioning (or) Commercial or Industrial Construction. The same cannot be both. Even otherwise, the ld. Counsel submitted that the services rendered by them are in pursuance of contracts which are composite in nature, involving supply of materials as well as provision of service. This has been substantially admitted by the original authority also. Relying on the decision of the Hon’ble Supreme Court in ***CCE&C, Kerala vs. Larsen & Toubro Ltd. – 2015 (39) STR 913 (SC)***, she

contended that no tax liability will arise on these activities, for the period prior to 01.06.2007.

3. Ld. AR appearing for the Revenue contested the appeal filed by the appellant-assessee. He stated that the nature of service has been examined by the original authority and applied to the tax entry in the relevant time. He classified the service appropriately and imposed liability. However, the Revenue is aggrieved by certain aspect of the order. Elaborating the ground of appeal filed by the Revenue ld. AR submitted that the original authority erred in applying different classification for different period. It is the submission for the Revenue that the tax should have been confirmed under Erection and Commissioning prior to 01.06.2007. The Revenue is also aggrieved by the finding of the original authority regarding abatement given in the taxable value in terms of Notification No. 15/2004-ST and 1/2006-ST. The gross amount has not been appropriately reckoned before allowing the abatement as there were free supply material involved in the execution of the contract by the appellant-assessee.

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

5. We note that the show cause notice made a general allegation for tax liability. It referred to two different tax entries but with no separate demand. The original authority however, confirmed the tax liability for same set of activities under two different headings for different periods. It is also recorded by the original authority that the contracts were of composite in nature, though, the finding is not categorical in respect of all contracts. Admittedly, as per the law laid down by the Hon'ble Supreme Court in ***Larsen & Toubro Ltd***. (supra)

no service tax liability will arise in respect of composite works contract prior to 01.06.2007. We also note that the reckoning of gross value for arriving at the abatement is to be considered in line with the decision of the Tribunal in ***Bhayana Builders – 2013 (32) STR 49 (Tri. LB)***. The Tribunal held that free supply of material has no connection in reckoning the gross taxable value. We note that these two judicial pronouncement were not available to the original authority for examination.

6. In view of the rival contention before us and law laid down by the Hon'ble Supreme Court in ***Larsen & Toubro Ltd.***, (supra) it is necessary for the original authority to have a fresh look into the facts of the case and to apply the correct legal position for a fresh decision. Accordingly, we set aside the impugned order and remand the matter to the original authority to examine afresh the tax liability, if any, of the appellant-assessee. The appellant shall be provided adequate opportunity to present their case. The grievance of the Revenue also will be considered by the original authority.

7. The appeals are allowed by way of remand.

(Dictated and pronounced in the open Court).

(Justice (Dr.) Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Pant