CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal Nos. 3559 & 3130 of 2012

(Arising out of Order-in-Appeal No. 42/ST/RPR-II/2012 dated 09.08.2012 passed by the Commissioner (Appeals-I) Central Excise, Raipur**)**

DATE OF HEARING : 26.09.2017
DATE OF DECISION : 26.09.2017

M/s R.D. Construction …. Appellants
(Rep by Sh. Mahesh Gaur, Adv.)

VERSUS

CCE, Raipur …. Respondents
(Rep. by Dr. Neha Garg, DR)

AND

CCE, Raipur …. Appellant
(Rep. by Dr. Neha Garg, DR)

VERSUS

M/s R.D. Construction …. Respondents
(Rep by Sh. Mahesh Gaur, Adv.)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 56883-56884/2017

PER B. RAVICHANDRAN :

Both the Revenue and the assessee-Appellants are in appeal against the Order-in-Appeal No. 42/ST/RPR-II/2012 dated 09.08.2012 passed by the Commissioner (Appeals-I) Central Excise, Raipur. The assessee-Appellants are engaged in construction activities. In the present case, for the period 16.06.2005 to 31.03.2010, the assessee-Appellants were put to Service Tax liability under the category of "Construction of Commercial" as well as "Residential Complex Services". The lower authorities confirmed the Service Tax liability and also imposed penalties on the assessee-Appellants. The Commissioner (Appeals), however, set aside the penalty under Section 76 stating that penalty under Section 78 has already been imposed.

2. The assessee-Appellants are aggrieved by the confirmation of the Service Tax liability and also imposition of penalty. The Revenue is aggrieved by the dropping of penalty under Section 76 by the impugned order.

3. We have heard both sides and perused the material available on record. The period in dispute is 16.06.2005 to 31.03.2010. The learned counsel submitted that all the services rendered by them are in terms of contracts which are composite in nature involving both supply of material as well as provision of services. He further submitted that they have supporting contract which will clearly establish said fact. We note that the Service Tax liability on such composite contracts will arise only w.e.f. 01.06.2007 in view of the decision of the Hon'ble Supreme Court in the case of **Commissioner vs Larsen & Toubro Ltd.,** 2015 (39) STR 913 (SC). He also submitted that they have discharged the Service Tax after 01.06.2007. In spite of their submission, the lower authorities confirmed the Service Tax liability without considering the already paid tax.

4. We considered the request of the learned counsel to establish the assertion regarding submission of Service Tax.

5. Law laid down by the Hon'ble Supreme Court (supra) with reference to the Service Tax liability on composite contracts is applicable to the present case. The tax liability of the assessee-Appellants has to be computed in line with the said decision (supra). Accordingly, the impugned order is set aside and the matter is remanded to the original authority for a fresh decision. While deciding the case, he will examine the fact of payment of Service Tax by the assessee-Appellants which is claimed to be on the impugned services only. Since the matter is remanded to the original authority, the grievance of the Revenue regarding dropping of penalty under Section 76 can also be considered afresh.

6. In view of the above discussion, the impugned order is set aside and the matter is remanded to the original authority for fresh decision.

7. In the result, the appeals are allowed by way of remand.

(Dictated & pronounced in the open court)

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(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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