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

Date of hearing/decision: 29.09.2017

Service Tax Appeal No.60541/2013 (DB)

[Arising out of Order-in-Original No.25/COMMR/ST/IND/2013 dated 27.08.2013 passed by the Commissioner of Central Excise, Customs & Service Tax, Indore]

M/s.Lion Engineering Consultant Appellant

Vs.

CCE & ST, Indore Respondent

Appearance:

Shri Piyush Kumar and Shri Jitendra Singh & Shri Devesh Tripathi, Advocates for the appellant.
Shri Sanjay Jain,AR for the respondent.

Coram:

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

Final Order No.56957/2017

Per: **B. Ravichandran:**

The appeal is against order dated 27.08.2013 of the Commissioner of Central Excise, Customs & Service Tax, Indore. The appellants are engaged in providing Consultancy Engineering service liable to service tax. They were registered with the Department and were discharging service tax and filing regular statutory returns. The dispute in the present appeal relates to non-payment of service tax on the consideration received by the appellant for rendering service as a sub-consultant to main consultant. The Revenue held a view that the appellant are liable to service tax on all the considerations received by them during the course of their consulting work. The appellant contested the same stating that they have discharged service tax on all their consulting work and wherever they have rendered services as a sub-consultant, they did not discharge service tax in terms of the departmental instructions contained in the Board's

Circular dated 2.7.1997 with reference to sub-contractor's tax liability. On the proceedings initiated against the appellant to demand the differential service tax not paid, the Original Authority confirmed the service tax liability of Rs.3,13,87,615/- and imposed penalty of 50% of the confirmed tax liability in terms of the Section 78 of the Finance Act, 1994.

2. Ld. Counsel for the appellant contesting the impugned order submitted that they have been discharging service tax on the Consulting Engineer Service promptly. However, they were under bonafide belief that for services under rendered as sub-consultant is not liable for service tax as the main consultants are discharing due service tax on the whole of the considerations received from the ultimate clients. He contested the demand mainly on the limitation. The period of demand is from 1.4.2006 to 30.09.2011 and the demand was issue on 28.05.2012. Ld. Counsel submitted that substantial part of the demand is hit by limitation. He drew our attention to the findings recorded by the Original Authority while fixing penalty under Section 78. Admittedly, the true and complete details of transactions are available in the specified records maintained by the appellant and there is no case for mis-declaration. As such, the ld. Counsel requested for setting aside the impugned order, which covered the period beyond the normal period of limitation. He also prayed for setting aside the penalty imposed on the appellant.

3. Ld. AR submitted that the appellant should have discharged service tax on all the considerations as there is no exclusion for a sub-consultant. There could be no bonafide belief when consideration is received for consulting engineer service.

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

5. We take the limitation issue first that is the main ground of the appellant's argument. We note that the Original Authority examined the limitation contended by the appellant and concluded that the appellants did not disclose all the considerations before the Department. We have perused the copy of ST-3 returns, filed along with the appeal. The appellants have indicated the considerations received under the category of taxable

service as well as exempted service. We note that the appellant were engaged in providing consulting engineer service and claimed sub-consultancy work as exempted service. The Original Authority also recorded categorically that true and complete details of transaction are available in the specified records maintained by the appellant. On that ground, he reduced the penalty to 50% under Section 78. We find if such is the situation, the case of mis-representation etc. to invoke extended period is not tenable. Even otherwise, we note that the appellants did declare all the considerations received by them in their statutory returns filed with the Department. The audit also recorded that the income under sub-consultancy work is as per the records maintained by the appellant. Based on these factual finding, we note that the demand for extended period cannot be sustained and as such, the liability of the appellant should be restricted to the normal period, which is not being contested. Accordingly, the impugned order is set aside to the extent that it confirms service tax liability for the extended period. The penalty also is, accordingly, set aside. The service tax liability for the normal period stands confirmed. The appeal is disposed of in the above terms.

(Dictated and pronounced in the open Court).

(Justice (Dr.) Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.