IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing: 12.10.2017
Date of Decision: 25/10/2017

Service Tax Appeal No.359/2012-(DB)

[Arising out of Order-in-Original No.30-31/COMMR/ST/ADJ/SGR-I/2011 dated 30.12.2011 passed by the Commissioner of Customs, Central Excise & Service Tax, Bhopal (M.P.)].

M/s.Sugandha Construction Pvt. Ltd. Appellant

Vs.

CCE, Bhopal Respondent

Appearance:
Rep. by Shri M.K. Sharma, CA for the appellant.
Rep. by Shri Ranjan Khanna, AR for the respondent.

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

Final Order No.57351/2017

Per B.Ravichandran:

The appeal is against order dated 30.12.2011 of Commissioner of Central Excise, Bhopal. The appellants are engaged in construction activities of both residential and commercial buildings. The dispute in the present appeal relates to tax liability for the period 10.08.2004 to 31.03.2008. The impugned order confirmed the service tax liability against the appellant amounting to Rs.92,88,572/- under two tax entries viz. "Construction of Residential Complexes" under Section 65 (91a) and "Commercial and Industrial Construction Services" under Section 65 (25b) of the Finance Act, 1994. Equal amount of penalty was also imposed under Section 78 of the Act with further penalty under Section 77 of the Act.

2. Ld. Counsel for the appellant submitted that with reference to "Construction of Residential Complexes" , the appellants have undertaken such construction for use by army personnel. These constructions do not attract service tax liability as they are not covered by the statutory definition for such tax. First of all, these residential units are for personnel use of the army personnel and were built for Directorate General of Married Accommodation Project Indian Army. Further, it is also submitted that these constructions do not require any approval from any Authority under any law for the time being in force. On these grounds, the appellants are not liable to service tax under "Construction of Residential Complexes Service".

3. Regarding their tax liability under "Commercial and Industrial Construction Services", ld. Counsel submitted that the said property is not for sale and same is for use by Cantonment Authorities for use for commercial purposes. Further, it is submitted that these construction activities are carried out in pursuance of composite works contract involving supply of goods as well as provision of service and accordingly, cannot be taxed under this tax entry. Even for works contract service, the tax liability will arise only w.e.f. 1.6.2007 in terms of the decision of the Hon'ble Supreme Court in the case of **Larsen & Toubro Ltd. - 2015 (39) STR 913 (SC).**

4. Ld. Counsel also contested the demand for extended period and imposition of penalties.

5. Ld. AR reiterated the findings of the Original Authority.

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

7. On the first issue, we note that the tax liability of such residential units built for DGMAP, Ministry of Defence, has been clarified by the jurisdictional Commissionerate vide letter dated 10.08.2008 based on the Board's clarification to the effect that construction of complexes for MAP for Army personnel is not liable to tax if their lay out does not require approval by an authority under any law for the time being in force. This clarification has been issued after a specific reference has been made by the Director (Contracts), DGMAP, Army Headquarters, New Delhi. In view of this fact, we note that such construction activity will get excluded from the tax entry. Further, we also note that the construction is for the Ministry of Defence for use of the Army personnel and as such, these are for personal use. In such situation also, it gets excluded from the tax entry. In this connection, we refer to the decision of the Tribunal in **Khurana Engineering Ltd. - 2011 (21) STR 115 (Tribunal-Ahmedabad).**

8. Regarding construction of commercial shops and complexes, we note that the same is liable to tax. However, the appellant claimed that these are carried out in pursuance to a composite works contract. In such case, the liability to service tax will arise only w.e.f. 1.6.2007 as held by the Apex Court in **Larsen & Toubro Ltd. (supra)**. This aspect requires re-verification and a fresh decision by the Original Authority as the Apex Court decision laying down the law on the tax liability on composite works contract was not available during the adjudication proceedings. In the present case, we set aside the impugned order and remand the matter back to the Original Authority to decide tax liability of the appellant with reference to commercial construction in line with the law laid down by the Hon'ble Supreme Court in **Larsen & Toubro Ltd. (supra).**

9. In view of the above discussion, we hold that the appellants are not liable for service tax for construction of residential units for the army personnel. Regarding their tax liability for construction of commercial shops and complexes, the matter is remanded back to the Original Authority as above. The appeal is disposed of in the above terms.

[Order pronounced on 25.10.2017]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.