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

Date of Hearing/Decision:6.10.2017

Service Tax Appeals No.60283 and 60288/2013

[Arising out of Order-in-Original No.36/S.Tax/D-I/2013 dated 21.08.2013 in Appeal No.ST/60283/2013 and Order-in-Original NO.37/S.Tax/D-I/2013 dated 21.08.2013 in Appeal No.ST/60288/2013, passed by the Commissioner of Central Excise, New Delhi]

M/s.Ahlcons India Pvt. Ltd. Appellants

Vs.

CCE, Delhi Respondent

Appearance:
Rep. by Shri S.K. Sarwal, Advocate for the appellant.
Rep. by Shri Sanjay Jain, DR for the respondent.

Coram:Hon'ble Shri Ashok Jindal, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.57527-57528/2017

Per B. Ravichandran:

These two appeals are on identical set of facts and hence are taken up for final disposal. The appellants are engaged in the construction activities. The proceedings were initiated against them to demand and recover service tax under the category of "Commercial or Industrial Construction Service" for the period 2006-07 to 2010-2011. Two issues were raised for consideration. Firstly, the appellant did not discharge service tax on the consideration received on mobilization advance. Secondly, the appellant did not pay service tax on certain construction claiming that they have taken the work as sub-contractor and the main contractor already paid the service tax on the whole value. The Lower Authority confirmed the service tax liabilities and imposed penalties also.

2. Ld. Counsel for the appellants submitted that the mobilization advances were received and were later adjusted in the running account and full service tax liability has been paid when the adjustments were made towards the advance, later. As such, they have not short paid any service tax. Regarding the service tax liability for the work executed as sub-contractor, he submitted that the main contractor has paid the service tax liability on the whole value and as such, there is no liability on them to pay again service tax. Further, he also submitted that the lower authority did not examine the correct classification of the tax liability as the work executed by the appellant are all composite in nature, involving the provision of service as well as supply of goods. Relying on the decision of the Hon'ble Supreme Court in the case of **Larsen & Toubro Ltd. - 2015 (39) STR 913 (SC),** the ld. Counsel submitted that there could be no tax liability on the appellant for the period prior to 1.6.2007.

3. Ld. Authorised Representative submitted that the Lower Authority did not have benefit of ruling of the Apex Court in the case of **Larsen & Toubro Ltd. (supra).** Further, regarding the tax liability on mobilization advance, he submitted that in terms of Section 67 of Finance Act, 1994, any amount received for taxable

services to be provided is also liable to be taxed at the time of receipt itself. Though the appellant claim that they have discharged service tax later, by adjusting in running account, belated payment will attract interest as applicable.

4. Heard both the sides and perused the appeal records.

5. Admittedly, the claim of the appellant regarding the nature of work executed by them is composite in nature should be examined with the legal principles laid down by the Hon'ble Supreme Court in **Larsen & Toubro Ltd. (supra).** In case, the work executed by the appellants were all found to be rightly classifiable as work contract service, no tax liability will arise for the period prior to 1.6.2007. This aspect requires verification with connected documents. The mobilization advance is liable to be service tax, as the provisions of Section 67 are clear to the effect that any money received for the taxable service to be provided is to be taxed at the time of receipt itself. The appellants, though claimed to have discharged the service tax later, subject to verification of the same, the liability for the interest on the late payment will arise. In any case, this also requires to be verified along with tax liability of the service itself in terms of the decision of the Apex Court in **Larsen & Toubro Ltd. (supra)**.

6. Regarding the claim of the appellant for tax liability, as sub-contractor, we note that the same also depends on the actual classification service during the material time. Further, the fact of payment of tax on full value by the main

contractor and connected issues are required to be examined afresh after correct classification of the tax liability.

7. In view of the above discussion and analysis, we find it fit to set aside the impugned order and remand the matter to the Original Authority for a fresh decision. Adequate opportunity shall be provided to the appellant to submit their side of the case while deciding the matter. The appeals are allowed by way of remand.

[Order dictated in the open court]

(B.Ravichandran)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

Ckp.