IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 20/11/2017.
DATE OF DECISION : 20/11/2017.

Service Tax Appeal No. 58504 of 2013

[Arising out of the Order-in-Original No. COMMISSIONER/RPR/ 50/ST/2013 dated 30/03/2013 passed by The Commissioner, Central Excise & Customs, Raipur.]

M/s Yash Constructions & Suppliers Appellant

Versus

CCE & ST, Raipur Respondent

Appearance

S/Shri Manish Gaur and Rachit Jain, Advocates – for the appellant.

Shri Sanjay Jain, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 58079/2017 Dated : 20/11/2017

Per. B. Ravichandran :-

The appeal is against order dated 30/03/2013 of Commissioner of Central Excise, Raipur. The appellants are engaged in various construction activities in pursuance of different contracts executed with the client. They were registered with the Department for payment of service tax under various categories.

The dispute in the present appeal relates to service tax liability of the appellant during the period January 2006 to January 2011. After completion of scrutiny of records and documents maintained by the appellant, the Revenue initiated proceedings against them for short payment of service tax under various contracts. The proceedings initiated against the appellant concluded in the impugned order. The Original Authority confirmed service tax liability of Rs. 53,66,681/- and imposed equal amount of penalty under Section 78 of the Finance Act, 1994. Further penalties were imposed under Section 76 and 77 of the Act.

2. Contesting the findings of the Original Authority, the learned Counsel for the appellant submitted on the following lines :-

(a) the appellants rendered service in pursuance of various contracts entered into with Raipur Development Authority, Chhattisgarh Tourism Board, Raipur Municipal Corporation, Chhattisgarh State Warehousing Corporation and Chhattisgarh Housing Board. These contracts were for variety of work and in many cases involved supply of goods alongwith the service ;

(b) the Original Authority confirmed service tax liability under 4 categories of services. The nature of contracts and the scope of service rendered by the appellants have not been examined alongwith the applicable legal provision. Mostly summary findings were recorded in spite of detailed defence taken by the appellant ;

(c) the contract executed by the appellants require specific examination to find out whether or not these are taxable only as works contracts w.e.f. 01/06/2007; some of the contracts are only for sale of goods and some others are with reference to non-commercial building or civil structure. These aspects were not examined for a clear finding by the Original Authority ;

(d) the appellants clearly pleaded that it is the status of the building or structure, whether or not for commercial use, that should be determine tax liability and not the status of the recipient. This aspect has not been considered. Based on the conclusion on the status of the recipient the tax liabilities have been confirmed. This is against the provision of the concerned tax entries. The demand is contested on limitation as well as against imposition of penalties.

3. The learned AR submitted that the impugned order dealt with large number of contracts and different issues. Though separate findings were not recorded for each one of the contracts, the general reason given by the Original Authority cannot be contested.

4. We have heard both the sides and perused the appeal record. Admittedly, the impugned order dealt with many contracts for their service tax liability. However, important issues like whether the contracts are of composite nature involving supply of goods as well as services or involving only sale of goods or for construction of buildings which cannot be considered of commercial nature were not dealt with for a finding. We note that there is substantial force in the plea of the appellant that these aspects require clear finding before confirming any tax liability.

5. On the first issue regarding nature of service contract we note in terms of decision of Hon'ble Supreme Court in **CCE & CUS, Kerala vs. Larsen & Toubro Ltd. – 2015 (39) S.T.R. 913 (S.C.)**, liability if any, will arise in such contracts for service tax only w.e.f. 01/06/2007. The contracts which are only for sale of goods will not attract service tax. Further, the status, nature and use of civil construction is relevant to decide the tax liability under commercial or industrial construction service. The status of recipient of service is of no relevance. If the building or civil structure is used for commercial purpose, tax liability may arise subject to fulfillment of other conditions. There should be clear finding in respect of claims made by the appellant with reference to certain civil structures as being non-commercial in use. The contracts with reference to construction of residential complex has also to be examined to determine whether the number of residential units are above 12 and the other requirements of the tax entry are fulfilled.

6. As noted above, we find that the impugned order could not be sustained in view of various infirmities recorded above. In the present case, there are multiple contracts subjected to service tax. It is necessary that each of the contracts is to be examined and finding recorded. The applicability of Hon'ble Supreme Court decision in **Larsen & Toubro Ltd.** (supra) also requires examination. In view of this, we note that the impugned order is to be set aside. We order accordingly. The matter is remanded back to the Original Authority for fresh decision after giving due

opportunity to the appellant. The appeal is allowed by way of remand.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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