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

COURT-IV

Date of hearing/decision: 01.12.2017

Appeal No. ST/55147/2013- [DB]
[Arising out of the Order-in-Original No. 159-ST-PKJ-CCE-ADJ-2012 dated 25/09/2012 passed by the Commissioner of Service Tax-Delhi-I]

Ajay Machine Tools … Appellant

Vs.

CCE, New Delhi …Respondent

Appearance:
Present Shri A.K. Batra, Advocate for the appellant
Present Shri Neha Garg, AR for the respondent

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. B. Ravichandran, Member (Technical)

FINAL ORDER No. 58260/2017

Per B.Ravichandran

1. The appellant is aggrieved by the order dated 25/09/2012 of Commissioner (Adjudication) Central Excise. The appellants were engaged in providing various services in pursuance to contracts entered into with the clients. The appellants executed a wide variety of contracts with reference to electrical works, maintenance and repair of DG sets, road lightening, electrical sub-station and various installation activities. The revenue initiated certain enquiry against the appellant for non-payment of Service Tax. Based on available documents on completion of enquiry, show cause notice dated 08/02/2012 was issued to the appellant. The notice alleged that the appellants did not discharge due Service Tax on various taxable services rendered by them during the period 2005-06 to

2009-10. A total demand of Rs.1,49,90,073/- was made in the notice. The notice alleged that the appellants are liable to tax under two main tax entries namely Management Maintenance or Repair Service and Erection Commissioning and Installation Service.

2. The case was adjudicated by the Original Authority resulting in the impugned order. He confirmed a total tax liability of Rs. 86,27,170/-. He also imposed penalties under various sections of Finance Act, 1994.

3. The Ld. Consultant appearing for the appellant submitted on the following lines.

a. The show cause notice was not specific regarding the tax liability except mentioning two classifications for tax entry and proposing demand on the basis of receipt shown in the balance sheets for these years. Such notice and the proceedings consequent upon such notice is not legally sustainable.

b. The adjudicating authority examined various contracts numbering more than 200, submitted by the appellants and passed order. He bifurcated and confirmed the demand in two categories as mentioned above. The classifications of various contracts for tax liability has been erroneously made. With reference to various contracts taxed under Erection Commissioning and Installation Service, tax liability if any will arise only as Works Contract Service as these are composite contracts. Further, even with reference to MMR services certain contracts which are specifically with refrecne to non commercial buildings are to be excluded from tax liability. The original authority did not appreciate the factual or legal basis of the scope of contracts for a proper classification of their services.

c. The abatment for taxable service in terms of Notification No. 1/2006 is correctly available in respect of any contracts which may be subjected to tax under MMR companies.

d. By allowing abatment for tax liability under Erection Commissioning and Installation Service the revenue admitted that these are contract with supply of materials. As such these contracts cannot be taxed in category other than works contract service. As no perusal has been made to tax under Works Contract Service, no demand can be sustained.

e. The Ld. Consultant submitted that considering disputes involved in composite Works Contract prior to decision of Supreme Court of India, the appellants could not be charged with suppression etc for invoking extended period. Even for the demand presently made has gone beyond even beyond five years i.e. covering period 01/04/2005 to 30/09/2005. In any case this period can never be covered by any demand.

f. It is also pleaded that the exemption available in terms of Sections 97-98 of Finance Act, 2012 should be made available to them for MMR service, Erection Commission Service which are in relation to roads.

4. The Ld. AR submitted that the appellant never cooperated with the department at the time of enquiry to ascertain the tax liability of the appellant. This has been categorically recorded more than once in the show cause notice and the department is left with no choice but to issue demand based on the documents made

available by the appellant. It is not open to the appellant to later come with the submission that the notice should have been more specific/ categorical as to their tax liability. The contract details are available only with the appellant. The non-cooperation of the appellant in not providing the contracts has resulted in the total demand being made under two tax categories. The appellant cannot be allowed to take advantage of their own action in not cooperating with the department.

5. Regarding the merits of the case it is submitted that the claim of the appellant that MMR services were exempted retrospectively with reference to roads and non-commercial buildings has no application to the present case as the appellants dealt with maintenance and repair of movable property. Similarly, fixing electrical lights and other incidental work though on the streets and roads will not make the work relating to road maintenance. On limitation it is submitted that even after initiation of enquiry the appellant did not cooperate and submit documents. It is not open to them to claim bonafideness for non-payment of service tax payable therein.

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

7. Admittedly, in the present case the appellants have executed numerous contracts for variety of work. At the time of issuing show cause notice the details of these contracts were not made available to the revenue in spite of repeated requests. Now, the appellant is taking a plea in the show cause notice is vague and without any specific quantification for each taxable service. We note that the appellants did submit all the contract's details before the

adjudicating authority which were examined when the order is passed. Before us the Ld. Consultant is taking a plea that legally such vague show cause notice cannot be subject of any proceedings which can be sustained. We are not in the agreement with proposition that the appellants can be allowed to take advantage of their own action of non-cooperation with the revenue. In any case they have participated in proceedings before the Original Authority by submitting all the contract documents which resulted in the present impugned order. The objection regarding the split up figures not available in the notice cannot be taken to a level to set aside the proceedings themselves, considering the attitude of the appellant during the proceedings. In any case due opportunity has been provided during the adjudication proceedings and the classification and quantification of tax on services have been duly made by the Original Authority on examining the contracts. No grievance or violation of principles natural justice would arise in the of the present case.

8. Considering the merits of the case we note, admittedly, the appellants were allowed abatment in taxable value with reference to Erection Commissioning and Installation Service resulting in tax liability of Rs. 20,81,566/-. We note that such abatments are provided by considering that there are supply of materials in the contract. The Hon'ble Supreme Court in the case of Larsen and Tubro Ltd. 2015 (39) STR 913 (SC) held that the composite contracts involving supply materials along with provisions of service are liable to Service Tax only w.e.f. 1/06/2007. The law laid

down by the Hon'ble Supreme Court has to be applied to various contracts which are now in dispute, wherever relevant.

9. Regarding the tax liability of the appellant on MMR Service we note a total tax of Rs. 63,45,604/- was confirmed under this category. The plea of the appellant is that many of the contracts will not come under MMR service for tax liability. There argument is that the contracts with reference to immovable property like non-commercial buildings, roads shall not be liable to tax due to exemption given retrospectively by the Finance Act, 2012. It is pleaded that this aspect has not been examined categorically, contract wise, by the Original Authority.

10. We note that the appellants did execute contracts for management maintenance and repair of both movable as well as immovable assets. Admittedly no exemption has been provided in respect of MMR service for movable property. However, abatment of value of goods supplied while providing service is available in terms of 12/2003 ST. The contracts which are eligible for the exemption in terms of Finance Act, 2012 and which are otherwise eligible for abatment under Notification 12/2003 requires categorical finding. We also note that the appellants claimed that most of their contracts are relating to roads. However, we note that the contracts may be either relating to electrification of roads or other incidental miscellaneous work with reference to roads. The actual scope of each of the contract which are claimed to be road work by the appellant are to be examined for proper finding.

11. We note that a part of demand is even beyond five years. This is not sustainable. Since we are inclined to remand the matter to the

Original Authority in view of above analysis the question of limitation also can be examined by Original Authority for a fresh decision.

12. The impugned order is set aside and matter is remanded back to the Original Authority.

[Order dictated and pronounced in the open court]

(S.K.Mohanty)
Member (Judicial)

(B.Ravichandran)
Member (Technical)

Rekha