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

Date of Hearing/Decision:05/12/2017

Service Tax Appeal No.51561/2014

[Arising out of Order-in-Appeal No.203(VC)ST/JPR-I/2013 dated 29.11.2013 passed by the Commissioner of Central Excise (Appeals-I), Jaipur]

M/s.BCC Developers & Promoters Pvt. Ltd. Appellant

Vs.

CCE & ST, Jaipur-I Respondent

<u>Appearance</u>:

Rep. by Shri Vijay Kumar, Advocate for the appellant.
Rep. by Shri Ranjan Khanna, DR for the respondent.

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

Final Order No.58270/2017

<u>Per B. Ravichandran:</u>

This appeal is against order dated 29.11.2013 passed by the Commissioner of Central Excise (Appeals), Jaipur.

2. The appellants filed a claim for refund of Rs.10,97,558/- on the ground that work executed by them for M/s.Nuclear Power Corporation of India Ltd., Kota is with reference to building of bridge/culvert over the drain. The said work is excluded from the tax liability under "Works Contract Service". The claim was rejected by the lower authorities mainly on the ground of limitation as well as that the culverts, which were constructed by the appellant are not excluded from the tax liability.

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

4. On perusal of the work order dated 16.03.2010, we note that such work order is for excavation and construction of intercepting drain, bridge/culvert over the drain, which included various civil work and electrical work. We note that for overall scope, the contract may come under the category of "excluded work" for tax liability under "works contract service". Regarding time bar, we are not in agreement with the appellant's plea that any tax paid by mistake of law should be refunded without reference to provision of Section 11 B of the Act. No refund can be sanctioned by Service Tax Authorities beyond the limitation provided by law. However, we find it fit and proper to remand the matter to the Original Authority for examining availability of refund to the appellant for the period covered within limitation in respect of such work relating to construction of bridge/culvert, which is apparently excluded from the tax liability. We remand the matter to the Original Authority for a fresh decision. The appeal is allowed by way of remand.

[Order dictated & pronounced in open court]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.