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 : 24/10/2017.
DATE OF DECISION : 24/10/2017.

Service Tax Appeal No. 511 of 2009

[Arising out of the Order-in-Original No. 27/VKG/2009 dated 26/03/2009 passed by The Commissioner of Service Tax, Service Tax Commissionerate, New Delhi.]

M/s Agrim Associates Pvt. Ltd. Appellant

Versus

CST, Delhi Respondent

Appearance

Shri Narender Singh, Advocate – for the appellant.

Shri Amresh 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. 58360/2017 Dated : 24/10/2017

Per. S.K. Mohanty :-

This appeal is directed against the impugned order dated 26/03/2009 passed by Commissioner of Service Tax, New Delhi.

2. The brief facts of the case are that the appellant is a civil contractor, engaged in undertaking civil as well as interior fit out work. The appellant mainly undertakes civil and miscellaneous

work for various hotels. The Department interpreted that the activity undertaken by the appellant relates to completion and finishing services and accordingly, not eligible for abatement under Notification No. 15/2004-ST dated 10/09/2004 and No. 1/2006-ST dated 01/03/2006. Therefore, the Department proceeded against the appellant for confirmation of the service tax on the ground that value of free supply items is includable in the gross value for the purpose of abatement.

3. The learned Advocate appearing for the appellant submits that the activities undertaken by the appellant were composite in nature, involving both supply of material and for provision of labour and thus, the activities undertaken by it were not liable to service tax for the period till 31/05/2007 under Commercial or Industrial Construction Service, classified under Section 65 (105) (zzq) of the Finance Act, 1994. To support such stand, the learned Advocate has relied upon the judgment of Hon'ble Supreme Court in the case of **CCE & CUS, Kerala vs. Larsen & Toubro Ltd. – 2015 (39) S.T.R. 913 (S.C.)**. With regard to the period from 01/06/2007, he submits that confirmation of demand on composite contracts - under category of Commercial or Industrial Construction Service (CICS) is not sustainable as per the judgment of Hon'ble Supreme Court in **Larsen & Toubro Ltd.** (supra). The learned Advocate also relies on the decision of this Tribunal in the case of **URC Construction Private Limited vs. Commissioner – 2017 – TIOL – 1214 – CESTAT – MAD.**

4. On the other hand, the learned AR appearing for the Revenue submits that since the work executed by the appellant involves only supply of labour and there is no transfer of material in execution of the assigned tasks, the said service should be classifiable under CICS and will not fall under the purview of Works Contract Service.

5. Heard both sides and examined the case records.

6. On perusal of the case records, we find that the activities undertaken by the appellant involves both supply of material as well as provision of labour. The appellant had raised the invoice on its contractees showing payment of VAT and such VAT payment particulars were duly reflected in the periodic VAT returns filed before the Jurisdictional VAT authorities. Since the activities undertaken by the appellant is composite in nature, involving both supply of materials as well as execution of assigned tasks, the said services should fall under the purview of Works Contract Service and will not be excisable to service tax prior to 01/06/2007 as per the judgment of Hon'ble Supreme Court in the case of **Larsen & Toubro Ltd.** (supra). Even for the period from 01/06/2007, the said service will not be subject to levy of service tax under CICS, since admittedly the activities undertaken falls under the Works Contract Service. We find that this Tribunal in the case of **URC Construction Private Limited** (supra) has set aside the demand for the period from 01/06/2007

on the ground that composite nature of service should not be classified under CICS service.

7. In view of above, we do not find any merits in the impugned order. Accordingly after setting aside the same, we allow the appeal in favour of the appellant.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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