1CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No. ST/53117-53119/2014-Ex [DB]

[Arising out of Order-in-Appeal No. 04-06/SM/ST/D-II/14 dated 24.01.2014 passed by the Commissioner (Appeal) Central Excise, New Delhi.]

M/s. S & S Technocrats Pvt. Ltd.. …Appellant

Vs.

C.S.T., Delhi-II. … Respondent

Appearance:
Mr. S.K. Sarwal, (Advocate) for the Appellant
Mr. Sanjay Jain, AR for the Respondent

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

Date of Hearing/ Decision.02.11.2017

Final Order No. 58392-58394/2017

Per S.K. Mohanty:

These appeals are directed against the impugned order dated 24.01.2014 passed by the Commissioner (Appeals), Central Excise, New Delhi. In this case, the benefit of abatement as provided under the Notification No. 1/2006-ST dated 01.03.2006 has been denied to the appellant. Further, the benefit of composition scheme for Works Contract has also been denied on the ground that ongoing projects after 01.06.2007 will not be classifiable under Works Contract Service.

2. The ld. Advocate appearing for appellant submitted that the work executed by the appellant were composited in nature, involving both supply of material as well as for execution of the job and that on the supply portion, the appellant had discharged appropriate VAT liabilities. Thus, he submitted that instead of classifying the work under Commercial or Industrial Construction Service, the same should have been classified under the works contract service by the authorities below. He also submitted that the various other submissions made by the appellant before the lower authorities were not considered and the adjudged demand were confirmed solely, on the ground that the appellant is not eligible for the abatement and also for the ongoing projects, the classification cannot be changed to the works contract service. The ld. Advocate also referred to the Final Order No. 52469-52470/2016 dated 14.07.2016, wherein the Tribunal has remanded the matter to the original authority to decide the issue afresh in line with the decision of Tribunal in the case of *Bhayana Builders Pvt. Ltd. reported in 2013 (32) S.T.R. 49 (Tri.-Del.)* and also the judgment of Hon'ble Supreme Court, in the case of *CCE. Kerala Vs. M/s. Larsen Toubro Ltd. reported in (2016) 1 SCC 170.* Thus, he submitted that since for the earlier period, in the case of the appellant, the Tribunal has remanded the matter to the original authority for a fresh decision on merits, the present appeals should also be disposed by way of remand.

3 On the other hand, the ld. DR appearing for the Revenue retreated the findings recoded in the impugned order.

4. Heard both sides and perused the case records.

5. We find that for ascertaining the fact of entitlement to the abatement benefit and consideration of the activities under the works contract service, the Tribunal vide final order dated 14.07.2016 has remanded the matter to the original authority for deciding the issues afresh in line with the decision of Tribunal in the case of *Bhayana Builders Pvt. Ltd. (supra)* and the judgment of Hon'ble Supreme Court in the case of M/s. *Larsen & Toubro Ltd. (supra).* Therefore, we are of the view that the present matter should also be remanded to the original authority, since period in dispute in this case is subsequent to the period, for which the decision had been rendered by the Tribunal vide final order dated 14.07.2016. Further, we also find that the other submissions made by the appellant were not considered by the authorities below in the respective orders.

6. In view of above, we set aside the impugned order and remand the matter to the original authorities for Deno adjudication in line with the above observations. Needless to say, that the appellant shall be given reasonable opportunity of hearing before deciding the issue afresh by the original authority.

7. In the result, the appeal is allowed by way of remand.

(Operative Portion pronounced in open court)

(**B. Ravichandran**)
Member(Technical)

(**S. K. Mohanty**)
Member (Judicial)

Sakshi