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 : 14/12/2017.
DATE OF DECISION : 14/12/2017.

Service Tax Appeal No. 60468 of 2013

[Arising out of the Order-in-Original No. 10/2013 (ST)-Commissioner dated 28/02/2013 passed by The Commissioner of Central Excise, Jaipur– I.]

M/s Sepco III Electric Power] Appellant
Construction Corporation]

Versus

CCE, Jaipur – I Respondent

Appearance

S/Shri Rachit Jain and Manish Gaur, Advocates – 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. 58417/2017 Dated : 14/12/2017

Per. B. Ravichandran :-

The appeal is against order dated 28/02/2013 of Commissioner of Central Excise, Jaipur – I. The appellants are engaged in construction activities. They have entered into an agreement with M/s Marudhar Power Pvt. Ltd., Hyderabad for the purpose of undertaking construction of a power plant at Bikaner in Rajasthan on turnkey basis. They have received certain advances for such agreement during the year 2006-2007. They have paid service tax alongwith interest, availing composition rate, under the category of works contract service during April 2009 to September 2009. The Revenue entertained a view that the appellant cannot avail composition scheme for such consideration as the amount is received prior to 01/06/2007 during the period they were liable to service tax under the category of "erection, commission or installation service" with no abatement under composition scheme. Accordingly, proceedings were initiated to demand differential service tax amount. The lower authority confirmed a service tax demand of Rs. 5,06,86,081/-.

2. The learned Counsel appearing for the appellant submitted that the contract now in dispute is a composite works contract. There is no dispute on this fact. Such contracts are liable to service tax only w.e.f. 01/06/2007 as held by Hon'ble Supreme Court in **CCE & CUS, Kerala vs. Larsen & Toubro Ltd. – 2015 (39) S.T.R. 913 (S.C.)**. The present dispute is on tax liability on services rendered by the appellant in pursuance of such contract for the period prior to 01/06/2007, when they received consideration as advance but prior to 01/06/2007. When the services were rendered prior to 01/06/2007 in terms of a composite works contract no tax liability arises. However, they have discharged service tax on such service belatedly under

'works contract service' availing composition scheme. In fact, such consideration is not liable to tax as the service as well as the amount for such service is relatable to the period prior to 01/06/2007. Hence, there is no question of paying differential tax on such service.

3. The learned AR submitted that the appellants have discharged service tax during the period April 2009 to September 2009 availing composition scheme, whereas the rate for composition during the material time is 4% and not 2%. Having discharged service tax under works contract service during 2009 appellant cannot take a plea that the services are not at all taxable.

4. We have heard both the sides and perused the appeal record. We note that the impugned order records that "it is evident that the noticee had provided the services during the period 2006-2007". Proceeding further,it was held that during the relevant time, the work executed by the appellant was covered under "erection, commissioning or installation service" and accordingly they are liable to pay service tax under such service. We note based on such factual and legal finding, the Original Authority concluded the tax liability on the appellant. It is evident that on this composite works contract, the appellant were discharging service tax w.e.f. 01/06/2007. Prior to that date, the said service cannot put to tax in terms of Hon'ble Supreme Court decision in **Larsen & Toubro Ltd.** (supra). In other words, there

is no service tax liability on composite works contract service prior to 01/06/2007. The Original Authority admitted that the services now under dispute are rendered prior to 01/06/2007. Hence, we find no tax liability will arise on such service irrespective of the date of receipt of consideration for the same.

5. In view of the above discussion and analysis, we find no merit in the impugned order. Accordingly, the same is set aside. The appeal is allowed.

(Order dictated and pronounced in open court.)

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

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