CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 21.12.2017

S.T. Appeal No. 51888 of 2017 with
ST/CoD No. 51015 of 2017 & ST/Misc. No. 51014 of 2017

(Arising out of order in original No. DLI-SVTAX-003-COM-60-61-16-17 dated 22.05.2017 passed by the Commissioner of Service tax, Delhi-III)

M/s Chaitanya Construction Co. Appellant

Vs.

CCE, Delhi-iii Respondent

Appearance:

Sh. Anil Kumar Singh, Advocate for the appellant
Sh.R. K. Manjhi, AR for the Respondent

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 58565/ 2017

Per: **Justice (Dr.) Satish Chandra**:

For the reasons mentioned in the CoD application, delay is condoned and we proceed to hear the appeal for final disposal with the consent of both the parties.

2. The present appeal is filed against the order-in-original No. DLI-SVTAX-003-COM-60-61-16-17 dated 22.05.2017. The period of dispute is 2007 to 2012.

3. Brief facts of the case are that the appellant are known as M/s Chaitanya Construction Co. and M/s Krishna Trading Company. Both the firms are

owned by the same Proprietor and having the same PAN No. from the CPWD. The service tax registration was applied for M/s Krishna Trading Co. on 22.12.2006 which was surrendered (after eleven months) on 22.12.2007.

4. Similarly, in the case of M/s Chaitanya Construction Co. the registration was applied on 07.12.2011 for the purpose of service tax but the same was surrendered on 19.03.2013 for the reason that the Exemption Notification dated 03.07.2012 was issued where no service tax was payable on the business activities of the appellant.

5. The appellant has supplied the goods (pipe, electrical goods etc.) to the Delhi Jal Board by raising the invoices. In the invoices, VAT was duly paid during the period under consideration. But the demand of the service tax was raised by the Department under Works Contract Service under Sections 65 (105)(zzq), 65(105)(zzd), 65(105)(zzzza) and 65(105)(zzzg) of the Finance Act, 1994. Equal amount of penalty was also levied. Being aggrieved, the present appeal is filed by the assessee.

6. With this background, we heard Sh. Anil Kumar Singh, ld. Advocate for the assessee and Sh. R. K Manjhi, ld. AR for the Revenue.

7. After hearing both sides and on perusal of record, it appears that during the period under consideration, the appellant has supplied electrical goods, pipes etc. to Delhi Jal Board by issuing invoices where the VAT was paid and charged on which Delhi Jal Board has deducted TDS as per Income Tax Act, 1961. No bill was raised by the appellant for providing any service. Delhi Jal Board also

has confirmed that no service has been provided by the appellant like installation etc.

8. Thus, in the instant case, it is evident that merely goods were supplied by the appellant where the VAT was paid. When VAT was paid, no service tax is leviable. Department has not collected any evidence to this effect. Thus, neither any service was provided nor any payment towards the service was provided by the Delhi Jal Board which is an Autonomous Body of Delhi Government. Except it, no supply was made by the appellant even to any individual. When it is so, than, we are of the view that service tax is not leviable in the instant case. Hence, we set aside the impugned order and allow the appeal.

9. In the result, appeal, CoD application as well as misc. application for early hearing of the appeal are allowed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

(Justice (Dr.) Satish Chandra)
President

Pant