Service Tax Appeal No.1218/2011 (DB)
& ST/1263/2011 (DB) with ST/CO/67/2012 (DB)

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

Date of Hearing/Decision:29.12.2017

Service Tax Appeal No.1218/2011 (DB)
& ST/1263/2011 (DB) with ST/CO/67/2012 (DB)

[Arising out of common Order-in-Original No.11/2011/ST/JPR-II/2011 dated 13.05.2011 passed by the Commissioner of Central Excise-II, Jaipur]

ST Appeal No.1218/2011 (DB)

M/s.Shree Mohangarh Construction Co. Appellant

Vs.

CCE, Jaipur-II Respondent

ST Appeal No.1263/2011(DB) with
ST/CO/67/2012 (DB)

CCE, Jaipur-II Appellant

Vs.

M/s.Shree Mohangarh Construction Co. Respondent

Appearance:
Rep. by Shri O.P. Agarwal, CA for the party.
Rep. by Shri Amresh Jain, AR for the Department.

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

Final Order Nos.58673-58674/2017

Per B. Ravichandran:

Both the Revenue and assessee are against the impugned order dated 13.05.2011 passed by the Commissioner of Central Excise, Jaipur-II.

2. The assessee/appellant are engaged in the construction activities. The impugned order confirmed service tax liability under three main headings viz. commercial or industrial construction service, management maintenance or repair service and GTA service.

3. Ld. Counsel appearing for the assessee/appellant submitted that the period of dispute is from 10.04.2004 to 31.03.2008. The impugned order confirmed the service tax liability for construction activities under "commercial and industrial construction service" for the period prior to 1.6.2007. The service tax liability for the period post 1.6.2007 was confirmed under 'works contract service'. The abatement/composition rate were allowed to the appellant. He submitted that these are admittedly composite contracts involving supply of goods as well as provision of service. These are liable to be taxed only w.e.f. 1.6.2007 in view of the decision of the Hon'ble Supreme Court in the case of **Larsen & Toubro Ltd. – 2015 (39) STR 913 (SC)**. Here, he also mentioned that the composition rates have not been correctly computed by the lower authorities and so rates of duty were applied wrongly.

4. Regarding confirmation of tax under "maintenance or repair service" he submitted that they have undertaken repair of roads. The said tax liability on such activity has been exempted retrospectively in terms of Section 97 of Finance Act, 2012. Accordingly, the tax liability will not survive.

5. A small amount of Rs.17,304/- was confirmed under GTA service. No demand has been made for such tax liability. The demand was made under "cargo handling service" and confirmation made under GTA service is not legally

sustainable. He also submitted that in terms of the decision of the Tribunal in **Bhayana Builders – 2013 (32) STR 49 (Tribunal-LB)**, the value of free supply items given by the service recipient to the appellant/assessee is not to be included in the taxable value.

6. Ld. AR contested the appeal of the appellant/assessee and submitted that the consideration received after 1.6.2007 should be rightly taxed. This was not properly considered in the impugned order to apply the correct rate of duty. Ld. AR submitted that for taxing under "works contract service" post 1.6.2007, the impugned order allowed composition rate. The same is not acceptable as the appellant/assessee did not file a due option for such composition scheme.

7. We have heard both the sides and perused the appeal record.

8. Admittedly, the contracts for construction executed by the appellant/assessee are of composite nature. These are liable to be taxed only w.e.f. 1.6.2007 under "works contract service" in terms of the decision of the Hon'ble in the case of **Larsen & Toubro Ltd. (supra).** No tax liability on such contracts will arise for the period prior to 1.6.2007 . The appellant /assessee contested the quantification of service tax liability alleging wrong application of tax rate for composition. He also pleaded for extending the provision of Section 67(2) for cum duty valuation. This requires verification by the Original Authority. The rate to be applied for the relevant period should be examined along with the taxable consideration for re-quantification. Cum duty valuation in terms of Section 67(2) benefit can be extended subject to verification of invoice/contract to the satisfaction of the provisions of Section 67(2).

9. Regarding repairs and maintenance of roads, we note that the period in the present demand is fully covered by the retrospective exemption in terms of the Section 97 of Finance Act, 2012. Accordingly, no tax liability will survive.

10. Regarding confirmation of service tax liability under GTA service, we find no demand has been made to the assessee/appellant on such category. In absence of any demand for this tax liability, we find that the service tax liability confirmed cannot be sustained.

11. We find that the Revenue is aggrieved by the findings in the impugned order extending the benefit of composition to the appellant post 1.6.2007. We note that though the appellant paid part of the service tax as per the terms of contract, they claimed composition scheme. Though no specific form for intimation has been prescribed under 2007 Scheme for composition payment of service tax, payment of tax in terms of said provision from the beginning can be construed to be such option. However, these aspects require verification by the Original Authority along with re-quantification and other issues mentioned above. These aspects can also be verified by the Original Authority to examine the correctness of the composition scheme adopted by the appellant as per the 2007 Rules.

12. The appellant/assessee strongly pleaded for waiver of penalties considering the issues involved in all these disputes. We are in agreement with the submission of the appellant/assessee that the tax liability on composite works contract are subject matter of litigation and was finally resolved by the Apex Court in the case **of Larsen & Toubro Ltd. (supra)**. Accordingly, no penalty is leviable for such tax liability against the appellant/assessee.

13. In view of the above discussion and analyses, the impugned order is set aside. The appeals of Revenue as well as of assessee are allowed by way of remand to the Original Authority for a fresh decision on the above points. Due opportunity to the appellant to submit their side of the case may be provided. Cross objection is also disposed of.

[Order dictated & pronounced in open court]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Ckp.