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

Date of Hearing/Decision:11.01.2018

Service Tax Appeal No.528/2009 (DB)

[Arising out of Order-in-Original No.29/VKG/2009 dated 31.03.2009 passed by the Commissioner of Service Tax, New Delhi]

M/s.Decor India Pvt. Ltd. Appellants

Vs.

CST, New Delhi Respondent

<u>Appearance</u>:

Rep. by Shri Kishori Kunal and Shri Prashant Tahliani, Advocates for the appellant.
Rep. by Shri A.K. Singh, AR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No.50294/2018

<u>Per B. Ravichandran:</u>

The appellant is aggrieved by the order dated 31.03.2009 passed by the Commissioner of Service Tax, New Delhi. The appellants are engaged in construction activities in pursuance of contracts with clients. The dispute in the present appeal covering the period October, 2005 to March, 2007 is with reference to claim of the appellant for abated taxable value applying either notification no.15/2004 or Notification No.12/2003-ST. It is the submission of the appellant that work executed by them involve sale /supply of materials and as such, they should have either been granted abatement or exclusion of value of sold materials. These claims were rejected by the Original Authority, who held that the services rendered by the appellant are more in the nature of the finishing services and cannot be considered as “Civil Construction Services”. Regarding notification no.12/2003-ST, he held there is no evidence of sale of goods during the course of provision of service rejecting the evidence submitted in the form of Chartered Accountant’s certificate and other documents.

2. Ld. Counsel for the appellant submitted that they have executed various types of contracts, which are composite in nature. The nature of work includes wooden partition, plastering, misc. civil work, floor and wall tiling and other similar services. These involve supply of materials and provision of labour. These activities 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)**. On this premise alone, the whole demand proceedings will not survive. Ld. Counsels submitted that though they have made a claim for various abatements and exclusion in view of the law laid down by the Hon’ble Supreme Court in the case of **Larsen & Toubro Ltd. (supra)**, they pray only for setting aside the impugned order on this ground alone.

3. Ld.AR reiterated the findings of the Original Authority and submitted that the decision of the Hon’ble Apex Court in **Larsen & Toubro Ltd.(supra)** was not available before the Original Authority.

4. We have heard both the sides and perused the appeal records.

5. The services rendered by the appellants are part of construction activities. These services are involving supply of goods as well as provision of service. This

much has been admitted in the discussion recorded in the impugned order. The rejection of the abatements in value or exclusion of materials sold is on different ground. As such, considering the fact that these services are of composite in nature and covered by the works contract service, we hold that the tax liability cannot be confirmed prior to 1.6.2007. It is only after the introduction of Section 65(105)(zzzza) of the Finance Act, 1994 for works contract activities w.e.f. 1.6.2007, the tax liability, if any, will arise on such contract. In this connection, we refer to the decision of the Tribunal in similar set of facts in **Vistar Constructions Pvt. Ltd. – 2016 (44) STR 675 (Tribunal-Delhi)** and in **Bhari Metal Fabrication Pvt. Ltd. – 2018-TIOL-104-CESTAT-MAD.**

6. In view of the above analysis, we find the impugned order is not sustainable and accordingly, the same is set aside. The appeal is allowed.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

(B. Ravichandran)
Member (Technical)

Ckp.