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. I

DATE OF HEARING : 31/01/2018.
DATE OF DECISION : 31/01/2018.

Service Tax Appeal No. 52372 of 2014

[Arising out of the Order-in-Appeal No. 14 (ST)/RPR-I/2014 dated 07/01/2014 passed by The Commissioner (Appeals), Central Excise & Customs, Raipur.]

M/s Unique Structure & Towers Ltd. Appellant

Versus

CCE & ST, Jaipur – I Respondent

Appearance

Shri Manish Saharan, Advocate – for the appellant.

Shri P. Juneja, Authorized Representative (DR) – for the Respondent.

CORAM :**Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri V. Padmanabhan, Member (Technical)

Final Order No. 50516/2018 Dated : 31/01/2018

Per. Justice (Dr.) Satish Chandra :-

The present appeal is filed against Order-in-Appeal No. 14 (ST)/RPR-I/2014 dated 07/01/2014.

2. Heard Shri Manish Saharan, learned Advocate for appellant and Shri P. Juneja, learned DR for Revenue. After hearing both

the sides, it appears that the Commissioner (Appeals) in its order observed that :-

> *"5.4 In the instant case though Respondent having the primary job of supply of materials to their client at FOR destination, yet the activity of unloading is shown specifically in the contract and remuneration paid separately which is evident from Respondent's books of accounts. It indicates a separate description in respect of unloading of goods showing the exact amount charged for the services rendered by the respondent. It shows a clear cut break up in respect of cargo handling service. It is a divisible contract and not a turn-key project contract. Further the respondent has not produced any documentary evidences in support of their claim that the incidental charges are included in the charges of Turn-key project contract. Larger Bench decision in the case of* ***CCE, Raipur vs. BSBK Pvt. Ltd. – 2010 (18) S.T.R. 55 (Tribunal – LB)*** *held that the turnkey contracts could be vivisected and the discernible service elements therefore could be segregated and classified for levy of service tax under the provision of the Act, provided such services are taxable service, defined under the Act. Thus, without any evidences their claim is not sustainable and acceptable. Thus Review order for recovery of service tax amounting to Rs. 1,09,676/- (including Education Cess and SHE Cess) from the respondent is sustainable under the proviso to Section 73 of the Finance Act, 1994 alongwith interest under Section 75 ibid Act under "Cargo Handling Service". Held accordingly".*

3. Further, the appellant has not produced any documentary evidence in support of their claim that the incidental charges are included in the turnkey project contract.

4. During the course of argument, learned Counsel for the appellant submits that the documents were produced, however, the same can be produced again if an opportunity is provided. When it is so, we remand the matter to the Adjudicating Authority for a fresh decision after going through the documents which will be provided by the appellant. Before taking decision, the learned Commissioner (Appeals) may provide an opportunity to hear to the appellant. Additional evidence is permitted as per law, if assessee will not cooperating.

4. In result, we allow the appeal by way of remand.

(Order dictated and pronounced in the open court.)

(V. Padmanabhan)
Member (Technical)

(Justice Dr. Satish Chandra)
President

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