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 : 16/01/2018.
DATE OF DECISION : 13/02/2018.

Service Tax Appeals No. 52612-52614 of 2014

[Arising out of the Order-in-Original No. 47-49/ST/COMM/DM/ RTK/2013-14 dated 26/09/2013 passed by The Commissioner of Central Excise, Rohtak.]

M/s Jindal Water Infrastructure Limited — Appellant

Versus

CCE & ST, Rohtak — Respondent

Appearance

Ms. Shweta Jain, Advocate - for the appellant.

Shri Amresh Jain, Authorized Representative (DR) – for the Respondent.

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

Final Order No. 50612-50614/2018 Dated : 13/02/2018

Per. B. Ravichandran :-

These three appeals are against common impugned order dated 26/09/2013 of Commissioner of Central Excise, Rohtak. The appellants are engaged in supply and erection of raw water piping and pumping system for M/s Raj West Power Limited and Common Effluent Treatment Plant and RO System for ELDCO

SIDCUL Industrial Park at Sitarganj in Rajasthan. Their work relating to these two projects are subject matter of dispute in the present appeals. The appellants in respect of raw water piping and pumping system project discharged service tax on the activity of erection and commissioning of such supply system claiming that the materials like pipes, pumps, motors required for such supply system was separately done under a supply contract. The Revenue entertained a view that the appellants are liable to service tax under works contract service and for the same, gross value which includes the materials supplied also should have been considered by the appellant. Similar is the case for the second project of affluent treatment plant executed at Sitarganj Industrial Park. Here also the appellant admitted the tax liability only on civil work part of the contract claiming that supply contract is separate and the value of supplied materials need not be included for service tax purpose. As such, the central dispute in these appeals is the valuation of contract executed by the appellants for the purpose of discharging service tax.

2. The Original Authority adjudicating 3 show cause notices issued to the appellant, held that the appellants are required to discharge their service tax liability on the aggregate gross amount received which will include amounts for erection work as well as amount for supply of materials which were erected. He held that the appellant executed a composite works contract and the gross value should have been arrived at including the value of material used in the such contract and the value of service

(labour) involved in such contract. He held that though the appellant has contested that there were two separate agreements for supply of materials and for execution of work, it is clear from the coordination contract and the terms of these contracts that these work executed by the appellant is composite and the sub-contracts for supply of material and execution of work has no bearing in valuation of such composite works contract.

3. The learned Counsel contesting the finding on the impugned order submitted that in respect of raw water piping and pumping system they had entered into two contracts, both dated 20/08/2007, one for supply of goods and another for erection. The coordination agreement dated 30/08/2007 is only for due coordination and to fulfill the respective obligations of supply contractor and service contractor for a smooth completion of the project. Similarly, for Sitarganj project there were two agreements, one for supply of materials and another for civil work and these cannot combined to make a single composite contract.

4. Relying on the decision of **Essar Projects (India) Ltd. vs. CCE & ST, Rajkot – 2014 (33) S.T.R. 696 (Tri. – Ahmd.)**, the learned Counsel submitted that there is no basis for including the value of goods supplied in terms of the separate contract for arriving at the gross value under works contract service. He further relied on the decision of Apex Court in **Union of India**

vs. Mahindra and Mahindra Limited – 1995 (76) E.L.T. 481 (S.C.) to submit that the contract has to be interpreted in a manner which is apparent and should be accepted as per intended scope.

5. The learned Counsel further submitted that the law was amended specifically w.e.f. 07/07/2009 to provide for inclusion of value of materials in respect of contracts of this nature. The said provision will not apply to the work done and invoices raised prior to 07/07/2009. The amendment carried out by Notification 23/2009 as Works Contract (Composition Scheme for Payment of Service Tax) Amendment Rule, 2009 will have no application to the present case.

6. The learned Counsel contested the demand on limitation and also pleaded against imposition of penalties. It is his case that the show cause notice as well as the original order did not justify the existence of ingredients for invoking suppression, willful mis-statement etc. for extended period of demand and for imposition of penalties.

7. The learned AR strongly contested the appeals. He submitted that the coordination agreement dated 30/08/2007 clearly brings out the intend and purport of the whole arrangement between the appellant and M/s Raj West Power Ltd. The appellant had deliberately made two sub-contracts earmarking supply of materials and erection work separately. The fact that the appellant and the service recipient are part of the

same group of companies and the wordings of the two agreements alongwith the coordination agreement will make it clear that what is intended by both the parties are the common purpose of execution of raw water piping and pumping system comprising of 184 kms. long pipeline for Lignite Thermal Power Station at Bardesh, Barmer. The terms of the contracts make it clear that both the parties intended a common work and the so called "supplier" and "erection contractor" being one and the same the coordination agreement brings out the facts clearly. There are set of technical specifications pertaining to both the contracts which are identical. Further, the learned AR submitted that even while discharging service tax on the erection contract, the appellants opted for composition scheme. It is contrary to the claim of the appellant themselves. If the erection contract is a pure service contract there is no question of paying service tax under composition scheme meant for works contract which should be a composite contract. When this matter was investigated the appellant abruptly switched over to payment of full rate of duty on the erection contract. This, apart from indicating the intention of the appellant, clearly shows such switch over itself is not legally permissible. The learned AR strongly contended that the whole issue is regarding the tax liability of the appellant with reference to composite works contract and the tax liability of such composite works contract should be determined strictly in accordance with Service Tax (Determination of Value) Rules, 2006, more specifically Rule 2A or Works Contract (Composition of Scheme for Payment of Service Tax) Rules, 2007. There is no other method of determining service tax liability in this particular dispute. The value apparently should be the gross value of consideration received by the appellant. The learned AR supported the findings of the lower authority in full.

8. We have heard both the sides and perused the appeal record. It is clear the main focus of the dispute is with reference to the claim of the appellant that they had separate contracts – one for supply of materials and another for execution of work either for erecting piping and pumping of raw water supply or for effluent treatment for two clients. We have considered the discussion recorded in the impugned order as well as examined the contract documents. It is clear that the appellant had shown two contracts both dated 20/08/2007 in respect of Barmer Project. One is claimed to be supply contract and another is claimed to be erection contract. There is a coordination agreement dated 30/08/2007. The excerpts from such coordination agreement as reproduced by the Original Authority is as below :-

> "***Dated 30th day of August, 2007, Co-ordination Agreement between Raj West Power Limited as owner and Jindal Water Infrastructure Limited as Supplier and Jindal Water Infrastructure Limited as Erection Contractor".***
>
> *Para (B), (C) & (D) of the Contract are as under :*
>
> *(B) The RAW WATER PIPING & PUMPING SYSTEM Supply supplier has entered into a contract dated 20/08/2007 with*

the Owner (the "Raw Water Piping & Pumping System Supply Contract") for inter alia, the manufacture, supply of Raw Water Piping & Pumping System for 8x135 MW Lignite Based Thermal Power Plant at Barmer District in the State of Rajasthan and other related equipment, details of which have been set out in the Raw Water Piping & Pumping System Supply Contract (the "Equipment");

(C) The Raw Water Piping and Pumping System Erection Contractor has entered into a contract dated 20/08/2007 with the Owner (the "Raw water Piping & Pumping System Erection Contract") for, inter alia, the erection, commissioning, testing, carrying out performance guarantee tests of the Equipment details of which have been seen in the RAW WATER PIPING & PUMPING SYSTEM Erection Contract …………

(D) The Contractors agree that the Contracts require to be performed in coordination to ensure the smooth delivery, installation and operation of the Equipment".

9. The said coordination agreement readwith the supply/erection contracts leads to an apparent conclusion that the intended purpose of both the parties is the supply and erection of raw water piping and pumping system. Both the appellant and the recipient of service belong to O.P. Jindal Group of Companies as recorded in the impugned order. The Original Authority examining the overall scope of the arrangement recorded as below :-

"48. In other words, there is a single Co-ordination Agreement dated 30/08/2007 between the assessee/noticee & M/s Raj West Power Ltd. in respect of

*the complete project viz., '**Raw Water Piping & Pumping System**' which includes supply of material & erection work. Further, there is a set of '**Technical Specifications**' pertaining to both the contracts which is referred as Section – III to the supply contract and the erection contract. The 'Technical Specifications' document is common to both the contracts and it is in the form of a "Contract Document Between RWPL & M/s Jindal Water Infrastructure Limited for Raw Water Pipe work and Pumping System" duly signed by the representatives of the assessee and M/s Raj West Power Ltd.*

49. I find that the assessee opted to pay service tax on the amounts received by it under the Erection Contract under the Composition Scheme provided under 'Works Contract Service'. However, as per the stipulation contained in Rule 3 (1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 Service Tax was to be paid on the gross amount charged for the said works contract including the cost of materials used (i.e. supply contract) but the assessee did not pay service tax on the amounts received by it under the supply contract".

10. Similar analysis was made in respect of Sitarganj Project also. We have examined the terms of both the contracts entered into by the appellant for Barmer Project. We have also considered the reliance placed by the appellant on the decision of the Tribunal in **Essar Projects (India) Ltd.** (supra). In the said case, the Tribunal specifically examined "defects liability" clause as recorded in two separate agreements for supply as well as erection. Noting the distinct nature defects liability clause in both

the agreements, the Tribunal held that these are to be treated as separate contracts. While examining the two contracts now contested in the present appeals, we note except for substitution of the word "contractor" for "supplier" the warranty or defects liability condition mentioned in Clause 34 of both the agreements are identical. It clearly establishes that as the supplier and contractor is one and the same the warranty and defect liability is to be on the appellant without any distinction for supply contract or erection contract. The defect liability clause in labour contract also talks about "defect in material", "bad materials". Materials are supplied in terms of supply contract which also carries same terms. This alongwith the scope of coordination agreement clearly reveals that the scope of composite works contract is clear and should be read together for the purpose of service tax. In fact, perusing both the contracts (supply or erection), we note that the various clauses are verbatim reproduction except for the of words "contractor or supplier" were suitably substituted. On overall examination the facts and circumstances of the case, we are in agreement with the findings recorded by the Original Authority regarding the composite nature of contract executed by the appellant and the valuation method that should be followed for discharging service tax liability.

11. It is relevant to note even while discharging service tax on the erection contract, the appellant chose to pay concessional rate by availing composition scheme for works contract. This is contrary to their basic claim that there is a separate supply

contract for materials and a contract for pure service. If the erection contract is only a service contract there is no question of availing composition scheme available to works contract service. In fact, the appellants later switched over to payment of service tax with full rate without composition. This clearly reveals that action of the appellant is with full knowledge of the legal implication of the course of action for discharging service tax by them.

12. The appellants contested the demands on limitation. We have perused the impugned order on this aspect. It is clear from the facts narrated above that the appellant is fully aware of the legal implications of service tax liability on composite works contract. Their act of first paying composition rate on what is claimed to be a service contract and later switching over to full rate of payment without composition clearly reveals the knowledge and deliberate intend of the appellant. We are not convinced with the claim of bonafideness on the part of the appellant in the present appeals. We have no reason to interfere with the findings either on merit or on limitation. Accordingly, we dismiss these appeals.

(Order pronounced in open court on 13/02/2018.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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