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

COURT-I

Date of hearing: 25.04.2018
Date of decision:27.04.2018

Appeal No. ST/52746/2014-DB
[Arising Out of Order-in-Original No. JAL-EXCUS-001-COM122-13-14 dated 08/02/2014 passed by Commissioner of Central Excise and Service Tax-JAIPUR-I]

Ganesh Narayan Sharma … Appellant

Vs.

C.C.E. & S.T.-Jaipur-i … Respondent

Appearance:
Present Shri O.P. Agarwal, CA for the appellant
Present Shri Sanjay Jain, AR for the respondent

Coram: Hon'ble Mr. S.K. Mohanty, Member (Judicial)
Hon'ble Mr. V. Padmanabhan, Member (Technical)

FINAL ORDER No. 51641/2018

Per: V. Padmanabhan

1. The present appeal is filed against the Order-in-Original No. 122/13-14 dated 29/01/2014. During the disputed period i.e. 01/04/2006 to 31/03/2011, appellant was engaged in construction activities. They were registered under the category of 'Construction of Residential Complex', 'Commercial or Industrial Construction Service' and 'Works Contract Service' for payment of Service Tax. During the period under dispute the appellant carried out the construction relating to, *inter-alia* independent residential houses, houses constructed for Police Department for use by their employees, Government Hospital, office cum store for Police Department, various other Government buildings, and also construction as per the orders of the Rajasthan Housing Board. The

Department was of the view that the Service Tax was not paid in full by the appellant and hence investigated into the payment of Service Tax by the appellant for the disputed period. After issue of show cause notice dated 04/04/2012 and completion of adjudication proceedings, impugned order was passed in which Service Tax demand amounting to Rs. 1,35,15,887/- was made against the appellant along with interest and penalties under various Sections of the Finance Act, 1994. Aggrieved by the said order the present appeal has been filed.

2. With the above background we heard Shri O.P. Aggarwal, Ld. Consultant for the appellant as well as Shri Sanjay Jain, Ld. DR for the Revenue.

3. The arguments advanced on behalf of the appellant are summarized below:-

I. The construction works executed by the appellant were rendered under composite contracts which involved both rendering of service as well as supply of goods and hence such contracts are in the nature of works contracts. The Hon'ble Supreme Court in the case of ***Larsen & Toubro r***eported at ***2015 TIOL 187 SC-ST*** has held that 'composite works contracts' will be liable to service tax only w.e.f. 01/06/2007 when a separate entry was added in the statute for works contract under Section 65 (105) (zzzza) of the Finance Act, 1994. Accordingly, It was submitted that no Service Tax can be levied on the construction activity of the appellant for the period up to 31/05/2007.

II. Since the taxability of works contract was the subject matter of dispute for a long time and the matters were referred to different Larger Benches of the Tribunal and was finally resolved by the Supreme Court in the above case, hence the Department is not justified in enforcing the demand for service tax for the extended period as has been held in the following cases.

i. Anand Construction Work V/s Commissioner 2017 TIOL 642 (Tri-Del).

ii. Bhopal Switch Gear Pvt. Ltd. V/s Commissioner 2017 TIOL 2904 (Tri-Del).

Accordingly it was submitted that the demand for the period 01/04/2006 to 30/09/2010 (falling within the extended period) will be hit by limitation and liable to be set aside.

III. Ld. Counsel further submitted that even for the demand falling within the normal time limit under Section 73, the appellant is not liable to pay Service Tax in respect of the following type of works.

i. Construction of residential houses for Police Department.

ii. Construction undertaken for ITI and other Government buildings.

In respect of such construction work no Service Tax is liable to be paid.

IV. The Ld. Counsel finally submitted that after exclusion of contracts such as above, the appellant will be liable to pay service tax only within the normal time limit under the category of 'works contract services'.

4. The Ld. DR fairly conceded that for the period up to 31/05/2007, no Service Tax will be liable to be paid by the appellant in respect of composite works contracts as per Larsen & Toubro case judgment. But he strongly argued that w.e.f 01/06/2007 there is no ambiguity in the statute wherein a specific entry for works contract service has been included. The appellant has failed to pay the Service Tax in spite of the clarity in the statute and have also failed to file statutory returns. Consequently, he argued that extended period of limitation will be available to the Revenue to recover such Service Tax. However, he fairly admitted that in respect of contracts executed for construction of Government buildings no Service Tax will be liable to be paid, but submitted that each contract will need to be scrutinized in this regard.

5. We have heard both sides at length and perused the appeal record.

6. Both sides have agreed that for the period up to 31/05/2007, no Service Tax will be payable by the appellant since the construction activity undertaken by them is in the nature of composite works contracts in which the transfer to property in goods involved in the execution of such contracts is liable to tax as sale of goods. In view of the above we set aside the demand for

the period up to 31/05/2007 as unsustainable in view of the categorical pronouncement of law by the Hon'ble Supreme Court in the case of Larsen and Toubro (supra).

7. It has been strongly contented on behalf of the appellant that demand cannot be sustained for the period covered within extended period under Section 73, since the liability to Service Tax of composite works contracts has been the subject matter of a large number of litigations and clarifications by the Board. In this connection we have carefully gone through the cited decision of the Tribunal in the case of Anand Construction (supra) wherein the Tribunal has held in identical facts that invocation of the extended period is not sustainable. Relevant paragraphs of the decision is extracted below:-

> *"6. Regarding the third point of the demand being partly time barred we find that, admittedly the issue of service tax liability on composite works contract has been a subject matter of large number of litigation and clarifications by the Board. In such situation, alleging fraud, collusion and willful statement on the part of the appellants is not tenable. It is seen that with the introduction works contract service as a separate tax entry w.e.f. 01/06/2007 though the tax liability on works contract was specified by name, even thereafter the dispute continued about vivisecting the contract for valuing tax purpose. The matter was referred to five Member Larger Bench in the Tribunal in the case of Larsen & Toubro Ltd. and the decision was also put to test before the Hon'ble Supreme Court resulting in the final order, stated above. In such circumstances, we find invoking extended period for alleging fraud etc. is not legally sustainable. As such, the service tax liability under works contract service against the appellants shall be restricted to normal period as applicable under Section 73 of the Finance Act, 1994. On the same reasoning, penalties imposed on the appellants are also set aside in terms of Section 80 of the Finance Act, 1994.*

By following the ratio of the Tribunal in the above case, which is on identical facts, we set aside the demand falling within the extended period of limitation.

8. It has been contended before us that a part of the demand which falls within the normal period of limitation under Section 73 is not sustainable in respect of the construction work undertaken by the appellant to various Government departments including the Police Department. In this connection, we are of the view that in principle no Service Tax can be charged in respect of construction work for Government departments such as residential house for police but we are of the view that individual contracts are required to be scrutinized before such benefit is extended. For this purpose the issue is remanded to the adjudicating authority for passing *de novo* decision in respect of the demand falling within the normal time limit. The appellant is given the liberty to file additional submissions and will be entitled to an effective hearing before the original authority before passing orders in the *de novo* proceedings.

9. In the result, the following order is passed:-

i. Demand set aside for the period up to 31/05/2007.

ii. Demand also set aside for the period falling within the extended period of limitation.

iii. Case is remanded to original authority for de novo decision for the demand falling within the normal period of time limit.

[Order pronounced in the open court on_27/04/2018___]

(S.K. Mohanty)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Rekha