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

COURT-II

Date of hearing: 14.05.2018
Date of Decision:17.05.2018

ST/COD/4477/2012
ST/CROSS/4476/2012
Appeal No. ST/2258/2012-DB
[Arising out of Order-in-Original No. 73-74-GB-2012 dated 26/04/2012 passed by Commissioner of Service Tax-DELHI - I (Appeal)]

C.S.T.-Service Tax - Delhi … Appellant

Vs.

L R Sharma … Respondent

Appearance:
Present Shri Sanjay Jain, DR for the appellant
Present Shri Rajveer Singh, Advocate for the respondent

Coram: Hon'ble, Mr. V. Padmanabhan, Member (Technical)
Hon'ble, Ms. Rachna Gupta, Member (Judicial)

FINAL ORDER No. 51851/2018

Per: V. Padmanabhan

1. The respondent has filed the application for condonation of delay in filing the cross objections. For the reason cited, the delay in filing of cross objections is condoned.

2. The present appeal is filed by the revenue against the Order-in-Original No. 73-74/2012 dated 24/04/2012. The respondent is engaged in the work of providing/ laying/jointing/ replacement of water pipelines for Delhi Metro Rail Corporation (DMRC), Delhi Jal Borad (DJB) and other similar companies. The Department investigated into the affairs of the respondent and demand for Service Tax was raised vide show cause notice dated 15/10/2010 covering the period 2004-05 to 2009-10. By issue of subsequent show cause notice dated 14/10/2011 the demand was further raised for the period 2010-11. After completion of due process of adjudication, the Adjudicating Authority passed the impugned order in which the entire demand of Service Tax was

dropped. Aggrieved by the impugned order revenue has filed the present appeal.

3. With the above background we heard Shri Amresh Jain. Ld. DR for the Revenue as well as Shri Rajveer Singh, Ld. Advocate for the respondent.

4. The submissions advanced on behalf of the revenue is summarized below:-

i. Revenue submitted that the respondent has undertaken various works for Delhi Jal Board as well as DMRC. For the activities undertaken for Delhi Jal Board the Department is not disputing the dropping of Service Tax demand. However, the Department is of the view that the activities carried out for DMRC are different and cannot be treated in the same manner as the activity carried out for Delhi Jal Board.

ii. Ld. DR further submitted that the activities for DMRC will fall under Section 65 (39a) read with Section 65 (105) (zzd) of the Act. He submitted that the Adjudicating Authority has erred in treating the activity undertaken for DMRC as the same as the activity carried out for Delhi Jal Board.

iii. He submitted that the activities undertaken for DMRC are liable to be classified under Works Contract Service which will be liable to Service Tax after the introduction of this category in the statue w.e.f. 01/06/2007.

iv. He also argued that Adjudicating Authority was in error in not considering the activities carried out for DMRC separately and charging the same to service tax.

v. Finally he submitted that the impugned order merits to be modified.

5. The Ld. Respondent draws our attention to the written submission already submitted by them as well as Cross Objection filed by the respondent. He reiterated the main arguments summarized in para 6 of the written submission. He submitted that the activities undertaken by the respondent were covered by the decision of the Hon'ble High Court in the case of ***Larsen And Toubro 2015 (39) STR (913) SC***.

6. He cited the Tribunal's decision in the case of Sawadeshi Construction Company Final Order No. 50158/2018 dated 16/01/2018 (para 8).

7. Finally he submitted that the activities undertaken are not liable to payment of Service Tax and the impugned order merits no interference.

8. He also submitted even during the proceedings before the Adjudicating Authority the respondent has submitted all the relevant records for verification.

9. Heard both sides and perused the case records.

10. During the period under dispute, the respondent had carry out certain work for DMRC as well as Delhi Jal Board, in connection with laying/shifting of water pipelines. The Adjudicating Authority dropped the entire demand of Service Tax by holding that the activity carried out for both agencies is regarding laying of pipelines and the said activity will not be covered under the category of Erection Commission or Installation Service under Section 65 (39a) of the Finance Act.

11. Revenue, in the present appeal has sought to differentiate between the work carried out to DMC as well as DJB. The Revenue is not

disputing the dropping of the Service Tax demand in respect of DJB but have argued that the activity undertaken for DMRC is not exclusively pertaining to laying of pipeline and the said activity will fall within the definition of Section 65 (39a).

12. In the cross objections filed on behalf of the respondent, it is contended that the activity itself will fall under Works Contract Service and not under Section 65 (39a) read with 65 (105) (zzd).

13. The Bench directed both parties during earlier hearings to submit the copy of the relevant contracts executed by the respondent with DMRC, with a view to considering the correct nature of the activity so as to come to definite conclusion about such activity in relation to the impugned order. However the Ld. DR could not obtain the copy and submit the same for the perusal of the Bench. The Ld. Advocate for the respondent asserted that copy of all relevant documents were submitted before the Original Adjudicating Authority and hence the respondent is not required to submit the same again before the Tribunal.

14. After appreciating the submissions by both sides, we are of the view that the relevant contracts executed by the respondent with DMRC will need to be scrutinized for taking a definitive view whether such activities will be liable to Service Tax under the category of Section 65 (39a) of the Act. Since the relevant agreements have not been produced for our perusal, we are left with no option but to remand the matter to the Adjudicating Authority for de novo decision after perusing the relevant contracts with DMRC.

15. We make it clear that the dropping of Service Tax in respect of Delhi Jal Board has not been challenged by Revenue.

16. In the result, the impugned order is set aside only in respect of the demand of Service Tax pertaining to DMRC contracts. The Adjudicating Authority will pass order in the de novo proceedings after extending an effective hearing to the assessee.

17. Additional evidence may be admitted as per law.

[Order Pronounced in the open court on_17/05/2018__]

(Rachna Gupta)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Rekha