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

<u>COURT –II</u>

Date of hearing/decision: 08.06.2018

Appeal No. ST/51153/2014-DB
[Arising out of Order-in-Appeal JAI-EXCUS-001-APP-148-13-14 dated 15/10/2013 passed by the Commissioner of Central Excise and Service Tax-JAIPUR-I.]

Surender Kumar Bansal Appellant

Vs.

C.C.E. & S.T.-Jaipur-i Respondent

Appearance:
Shri Manmohan Mahipal, CA for the appellant
Shri Amresh Jain, AR for the Respondent

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

<u>Final Order No. 52213/2018</u>

Per: <u>V. Padmanabhan</u>:

1. The present appeal challenges the Order-in-Appeal No. 148/2013 dated 15/10/2013. The appellants are engaged in providing Commercial or Industrial Construction Service falling under Section 65 (25b) read with Section 65 (105 (zzq) of the Finance Act, 1994. The Department, while scrutinizing the records of the assessee, noticed that they have failed to pay Service Tax in respect of:-
   i. Construction of EWS quarters for Urban Improvement Trust, Sriganganagar and
   ii. Construction of milk chilling plant for Rajasthan Co-operative Dairy Milk Federation Ltd.

2. After issue of the show cause notice, both the authorities below ordered payment of Service Tax. In the impugned order reduced the liability for Service Tax and upheld the demand to the

extent of Rs. 4,24,259/-. The same has been challenged in the present appeal.

3. In this connection, we heard Shri Manmohan Mahipal, Ld. CA representing the Appellant and Shri Amresh Jain, Ld. DR representing the Revenue.

4. The Ld. CA submitted that first part of the demand pertaining to construction of EWS Quarters for Urban Improvement Trust was carried out during the year 2005-06. The nature of the activity has been classified by the Department under Commercial or Industrial Construction Service. But the activity is in the nature of Works Contract Services since the construction involved supply of material as well as service. He relied on the decision of the Hon'ble Supreme Court in the case of ***Larsen and Toubro 2015 (39) STR 913 (SC)*** and submitted that prior to introduction of Works Contract Service w.e.f 01/06/2007 no Service Tax can be levied under any other category of Service.

5. With reference to construction of milk chilling plant which was carried out during the period 2008-09, he submitted that the activity was carried out for Rajasthan Cooperative Dairy Milk Federation Ltd. He drew our attention to the bye-laws of the Rajasthan Cooperative Dairy Federation Ltd and emphasised the fact that the objective of the Federation was to carryout activities for promoting, production, procurement, processing and marketing of milk and milk products for economic development of the Animal Husbandry/ Farming Community. He argued that since the organization is for the benefit of farmers, the objective of the organization is not in the nature of commerce and hence the construction activity carried out for such an organization will

not be covered within 'Commercial or Industrial Construction Service. Accordingly, he submitted that the demand on this ground also may be set aside.

6. The Ld. DR justified the impugned order. He argued with reference to the Rajasthan Co-operative Milk Federation Ltd., that this organization cannot be considered as non-commercial. Since, the said organisation is a Ltd. Company with share capital and earns profit by its activity.

7. We have heard both sides carefully and considered the record.

8. A part of the demand pertaining to consideration of EWS quarters for Urban Improvement Trust has been carried out during the period 2005-06. Since the nature of construction activity involves both supplying of goods as well as service, the same is falling within the category of Works Contract Service and by following the decision of the Hon'ble Supreme Court in the case of L&T (supra) we hold that the Service Tax demand cannot be sustained since the activity was carried out prior to introduction of WCS. Hence demand on this ground is set aside.

9. The second part of the demand pertains to the activity carried out for Rajasthan Cooperative Dairy Milk Federation Ltd. It has been claimed that the activity should be considered as not rendered for a Commercial undertaking. In this connection we have perused the bye-laws of Rajasthan Cooperative Dairy Milk Federation Ltd. We have also perused the Balance Sheet of the said organization for the period ending 31/03/2012. Even though the said Society has been formed for the activities of procurement, processing and marketing of milk and milk products, it cannot be denied that it is a Limited company with

authorized share capital and with the objective of carrying out business to earn a profit. Hence we are of the view that the Cooperative society is commercial concern and hence the construction activity carryout for such an organization is liable to be considered as falling within Commercial or Industrial Construction Service. Since there is no dispute about the fact that such a construction activity have been rendered and consideration received, we are inclined to uphold the Service Tax levy on this part.

10. In the result, the order pertaining to demand to the extent of Rs. 66,095/- pertaining to construction of EWS quarters is set aside. Rest of the demand is upheld.

(Dictated and pronounced in the open Court)

(Rachna Gupta)
Member (Judicial)

(V. Padmanabhan)
Member (Technical)

Rekha