IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Date of Hearing: 26.07.2018
Date of Decision: 02.01.2019

ST/ROM/50458-50460/2018
Appeal No. ST/52612-52614/2014-DB
[Arising Out of Order-in-Original No. OIO-47-49-ST-COMM-DM-RTK-2013-14 dated 26/09/2013 Passed by Commissioner of Service Tax-ROHTAK]

Jindal Water Infrastructure Ltd. Appellants

Vs.

CCE, Rohtak Respondent

Appearance:
Shri S. Santhanam, Advocate for the Appellant
Shri Amresh Jain, AR for the Respondent

CORAM:
Hon’ble Shri Anil Choudhary, Member (Judicial)
Hon'ble Shri C.L. Mahar, Member (Technical)

FINAL ORDER NO. 50005-50007/2019

Per Anil Choudhary:

1. The appellant has filed the present applications for Rectification of Mistake in the Final Order No. 50612-50614/2018 dated 13.02.2018 passed by this Hon’ble Tribunal.

2. The Ld. Counsel for the appellant has submitted that this Hon’ble Tribunal while passing Final Order dated 13.02.2018, has failed to consider various vital points which were duly argued by the counsel for the appellant during the course of hearing, therefore, this Hon’ble Tribunal has committed an error apparent on record, which needs rectification. In order to appreciate the submission of the appellant, the facts in brief are as follow.

3. M/s Jindal Water Infrastructure Limited (appellant) had undertaken two projects separately for supply of goods and supply of services i.e.

   i. Barmer Project in Rajasthan and the other at

   ii. Sitarganj in Uttarakhand.

4. The applicant had entered into two contracts with M/s Raj West Power Limited ("purchaser") in respect of "Raw Water Piping and Pumping System" comprising 184 Km long pipeline for lignite fired Thermal Power Plant (1080 MW) capacity at Bardish, District Barmer in Rajasthan ("Barmer Project"). The said two contracts in relation to the Barmer Project are as follows

   a. Raw water Piping and Pumping System Supply Contract ("Supply Contract") dated 20-08-2007.

   b. Raw water Piping and Pumping System Erection Contract ("Erection Contract") dated 20-08-2007.

5. The Raw water Piping and Pumping System Erection Contract ("Erection Contract) dated 20.08.2007, involves use of cement, steel.

   As per terms of the supply contract, the applicant had supplied carbon steel pipes, M.S. pipes, ductile iron pipes, pumps, motors, valves, dog bend, rubber gasket, soft starters, optical fibre cables, etc. The value of the supply contract was Rs. 278.56 Crores. Further, as per the terms of the Erection Contract, the applicant was providing the services of unloading, handling, erection, testing, commissioning, carrying performance guarantee test, etc. The value of Erection Contract was Rs. 33.39 Crores.

6. The appellant also entered into a "Coordination Agreement" dated 30.08.2007 so that the performance of respective obligations both as supply contractor and service contractor, under the above said two agreements, will not adversely affect the progress of the project.

7. The applicant has similarly entered into two contracts with 'Jindal ESIPL CETP (Sitarganj) Ltd'. in relation to the "4MLD Common Effluent Treatment Plant and RO system for ELDCO SIDCUL Industrial Park at Sitarganj

("Sitarganj Project"). Similar to the Barmer Project, there were two agreements, one for supply of goods and other for civil work as under:

a. Civil work contract dated 21.05.2008 for civil and structural work and handling over of 4MLD Common Effluent Treatment Plant and RO system. The value involved is Rs. 5.557 Crores ("Civil Work Contract") Involves use of goods like cement & steel.
b. Supply contract dated 15-09-2008 for the supply, loading, stacking of mechanical, electrical equipment and instrumentation systems. The value involved is Rs. 8.304 Crores. ("Supply Contract")

8. The Ld. Counsel has taken us through the main clauses of separate contracts of supply of goods and the contract of erection/construction. The Ld. Counsel has also demonstrated the invoices raised under each of the contracts. The Ld. Counsel further states that the findings of this Tribunal in the Final Order are perverse and contrary to the facts on record. Placing reliance on the co-ordination contract, which was available in the case of only Barmer Project, inference drawn is erroneous & perverse to the facts on record. It is evident that the appellant has raised separate invoices under the separate contracts. Accordingly, upholding the charging of Service Tax under the category of 'Works Contract Composition Scheme' by clubbing the amount received under the two separate contract is erroneous & against the provisions of law. The appellant had rightly deposited Service Tax on the erection contract under the composition scheme, as it also involved material like cement, steel etc. So far the work done at Sitarganj Project, Uttarakhand is concerned, there is no co-ordination agreement available for clubbing the receipts or value under the supply contract and erection contract. The appellant have used the goods belonging to the principal for erection contract. Thus, there is no transfer

of materials from the appellant to the principal or contractee under the Erection contract. Further this Tribunal have not considered the Larger Bench ruling of the Tribunal ***in Lanco Infratech Ltd. V/s CCE 2015 (38) STR 709***, where it is held that service tax is not attracted on turnkey project of laying of pipeline for water supply, sewage, etc. Accordingly, the Final Order needs to be recalled & modified for the ends of justice.

9. Heard Ld. AR for Revenue who states that the appellant by way of present ROM is seeking review of the Final Order, which is not permissible.

10. Having considered the rival contentions & also perusal of records. We find that there are separate contracts for supply of material & for erection work. There is no interlinking in the two contracts. Although the contracts are between the same parties.

11. We find, under the supply contract, the appellant have purchased the goods mainly from other manufactures/ supplier of goods and further resold the goods to principal, in the course of transit by raising the invoice on the principal, and endorsing the documents of title, as permissible in trade & also as specified under Sections 3(b) of Central Sales Tax Act, 1956. We further find that in the erection contract, the appellant has also used and added the cost of material being cement & steel. Further, we find that while doing the erection work, the items or materials being pipe, etc, the ownership of the same stood already transferred to the principal before the erection, as is evident from the invoices (under supply contract) raised by the appellant. Copy of the sample invoices are already on record. Thus, the appellant could not have again transferred the material, supplied under the supply contract, by way of works contract or service contract. Thus, we find that there is error in the Final Order passed by this Tribunal, whereby it has been considered that supply & transfer to the principal is by way of

accretion under the erection contract. We find that the facts are otherwise, therefore the findings in the Final Order are perverse. Accordingly, we recall the Final Order dated 13.02.2018. We further hold that the appellant is not liable to Service Tax on the goods supplied under the separate supply contract, as the ownership was already with the principal at the time of execution of erection contract.

12. We further find that Notification No. 23/2009-ST dated 07.07.2009, provides that for calculation of gross amount under 'works contract', shall include the value of all goods used in the execution of works contract, whether supplied under any other contract for a consideration or otherwise. However, it is provided that, this Notification is applicable prospectively, and will not apply where execution have commenced and/or payment received on or before 07-07-2009. As admittedly the work commenced in 2007 & 2008, there is no clubbing applicable.

13. Accordingly, we allow the present applications and consequently allow the appeals and set aside the impugned orders. We further hold that the appellant is liable to pay Service Tax only on erection contract under the normal scheme, and not under the composition scheme. Accordingly, appeals are allowed with consequential relief as per law.

14. The appellant is directed to file fresh computation of tax payable and pay tax (if any) or claim refund, and file before the adjudicating authority for verification and arithmetical accuracy, within a period of 45 days, from receipt of a copy of this order.

(Order pronounced in the open court on 02/01/2019)

(C L Mahar)
Member (Technical)

(Anil Choudhary)
Member (Judicial)

Rekha