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

COURT –I

Date of hearing/ Decision: 15.02.2019

Appeal No. ST/50016 &50199/2016-DB
[Arising out of Order -in-Original No. OIO-32-ST-SVS-DL-III-2015 dated 25/08/2015 passed by Commissioner of Service Tax-DELHI-III]

CGST-Delhi III
Lattice Interiors Appellant

Vs.
Lattice Interiors
CGST-Delhi III Respondent

Appearance:
Sh. Vivek Pandey, DR & Ms. Vibha Narang, Advocate for the appellant
Ms. Vibha Narang, Advocate & Sh. Vivek Pandey, DR for the Respondent

Coram:
Hon'ble Justice Mr. Dilip Gupta, President
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No. 50279-50280/2019

Per: V. Padmanabhan

1. These two appeals are against the order-in-original number 32/2015 dated 25/08/2015. M/s Lattice Interiors (M/s Lattice) were registered with Service Tax Department w.e.f. 2/05/2008 for providing commercial or industrial construction service. The Department received intelligence that M/s Lattice was not discharging service tax in full for these activities carried out by them. Investigation was undertaken into the activities in pursuance of the said intelligence. The various summons issued by the departmental authorities for collection of information was not replied to by M/s Lattice. The departmental authorities further obtained copies of balance sheets for the years 2008-09 to 2011-12 from the Income Tax Department. M/s Lattice, vide their letter dated 12/08/2013, submitted the details of year wise contracts along with gross receipts. After completing the investigation show cause notice dated 23/10/2013 was issued to M/s Lattice by the department

proposing to demand service tax totally amounting to Rs. 1,40,34,651/- for the periods 2008-09 to 2012-13. Detailed reply was submitted by M/s Lattice to the adjudicating authority. It was submitted that the show cause notice dated 23/10/2013 was served on M/s Lattice only on 27/10/2013. Consequently a portion of the demand for the period 01/04/2008 to 30th September,2008 was claimed as time barred, being beyond the period of five years provided for issue of show cause notice under Section 73 of the Finance Act, 1994.

2. The M/s Lattice submitted details of various contracts executed by them. It was claimed that most of the contracts were for non-commercial buildings and provided to agencies such as Indian Railways, NTPC, Prasar Bharti etc. It was claimed that since the services were mostly provided for non-commercial purposes, the demand for service tax was not justified.

3. The adjudicating authority examined the various contracts, copies of which were submitted by M/s Lattice. He dropped Service Tax demand on services provided to Prasar Bharti, New Delhi Municipal Corporation, NTPC, Indian Railways, Power Machines (India) Ltd, NBCC Ltd which were not meant for commercial use. In respect of certain construction undertaken by way of residential units meant for use of the employees ,also the demand for service tax was dropped. However, he held that the services rendered to Joint Stock Company, FEAT as well as Indian Oil Corporation were liable to service tax.

4. The adjudicating authority further observed that the nature of the various contracts executed by the appellant were in the nature of Works Contract Services. He took the view that for the period prior to 01/07/2012 such services will be classifiable under Works Contract Service. The demand for service tax made in the show cause notice was proposed under the

category of Commercial or Industrial Construction Service as well as Erection and Commissioning Service. Hence he held that the demand for service tax prior to 01/07/2012 was liable to be set aside. He however, upheld the demand for service tax in respect of Indian Oil Corporation for the service provided during the period 2008-09 as well as in respect of Joint Stock Company, FEAT, totaling amount to Rs. 3,90,208/-. He also imposed penalty under Section 76 but refrained from imposing any other penalty.

5. The Revenue has challenged the portion of the adjudicating order in which substantial portion of demand proposed in the show cause notice has been dropped. The M/s Lattice has challenged the portion of the order in which service tax amounting to Rs. 3.9 Lakhs stands confirmed. Both the appeals are taken together for decision in this common order.

6. Heard Shri Vivek Pandey, Ld. DR for the Revenue, who argued the grounds raised by Revenue. His submissions are summarized below:-

a. The Ld. DR submitted that the adjudicating authority has set aside the demand by taking the view that demand raised in the show cause notice was for the period beyond five years. He referred to the provisions of the Section 73 of the Act and submitted that the "relevant date" is to be considered as the last day on which ST-3 Returns was required to be filed i.e. for the period from 01/04/2008 to 30/09/2008, the last date was 25/10/2008. Considering this as the relevant date, he submitted that the show cause notice dated 23/10/2013 covers the period of demand right from 01/04/2008.

b. He submitted that the adjudicating authority has wrongly taken the view in respect of the construction work carried out by M/s Lattice for M/s NBCC Ltd. He submitted that NBCC will not get the benefit of the exemption granted by the Notification Number 25/2012-ST dated 20/06/2012 which listed out various persons which will not be liable for payment of service tax after the introduction of the negative list regime w.e.f. 1/7/2012 (entry no. 12a).

c. The Ld. DR referred to the service provided to M/s Jindal Martech for NTPC Solapur for the period 2010-2011 and 2011-12. He submitted that such services provided will not be entitled to exemption but the adjudicating authority has failed to discuss the reasons why he has set aside the demand in respect of this activity. He referred to the activity carried out for M/s Suresh Agarwal during the period 2010-11. He submitted that the consideration received for such service will also be liable to payment of service tax. Lastly he submitted that the matter may be remanded to the adjudicating authority for de novo consideration to consider the above grounds as well as to give detailed findings for the conclusion.

7. The appeal filed by M/s Lattice is argued by Shri A.K. Batra, Ld. Consultant. He also advanced his arguments against the grounds of appeal filed by Revenue. His submissions are summarized below:-

i. The Ld. CA submitted that five year period provided under Section 73 of the Act will start from the relevant date. The show cause notice dated 23/10/2013 was served on M/s Lattice only on 27/10/2013; to this effect the Affidavit has already been submitted before the adjudicating authority. If 27/10/13 is considered as the date of service of notice, the five year period cannot extend earlier than 1st October, 2008.

ii. He rebutted the view taken by the Revenue that adjudicating authority has not passed a speaking order. He referred to the findings of the adjudicating authority and he pointed out that the adjudicating authority has examined all the contracts executed by the service provider, copies of which have been made available to him. On the basis of such scrutiny the adjudicating authority has taken the view that the activities carried out were in the form of Works Contract Service. He referred to the decision of the Hon'ble Supreme Court in the case of Larsen & Toubro reported at 2015 (39) STR 913 (SC) decided on 20/08/2015 and submitted that the Apex Court has held that in case of contracts which are composit in nature involving supply of goods and providing service using these goods are to be held liable for payment of service tax only w.e.f 01/06/2007, under the category of Works Contract Service only. He submitted that the activities carried out by M/s Lattice were undoubtedly in the form of composite contracts and the adjudicating authority himself has held that such activities are liable to be classified under Works Contract Service only for the period prior to 01/07/2012. Accordingly he submitted that the demand for the period prior to 01/07/2012 is liable to be set aside in as much as the show cause notice proposed demand of service tax under the categories of Commercial or Industrial Construction Service as well as Erection Commissioning Service. In this connection he submitted that the findings of the adjudicating authority merit no interference.

iii. For the period from 01/07/2012, Ld CA submitted that the total amount of Rs. 3.9 Lakhs confirmed by the adjudicating authority is made up of the service provided to M/s Indian Oil Ltd as well as to Joint Stock Company FEAT as follows:-

Particulars	Taxable value Rs.	Rate	Service Tax liability Rs.	Taxable category
Indian Oil Corporation	1,85,318	12.36%	22,905	Not specified
Joint Stock Co. FEAT	29,71,710	12.36%	3,67,303	
Total	3157028	---	3,90,208	

iv. He further submitted that the demand in respect of m/s Indian Oil Corporation is pertaining to the period 2008-09 and as such not liable to be paid in view of the Larsen & Toubro case.

v. In respect of the demand of Rs. 3,67,303/- provided to Joint Stock Company FEAT, he submitted that such activity was also in the nature of Works Contract Service. He further argued that the service tax liability has already been discharged by the appellant under the Works Contract Service after availing the benefit of abatement under notification number 24/2012 dated 26/2012. The adjudicating authority has failed to notice the fact that the service tax as above has already been discharged.

vi. Finally the Ld. CA submitted that the demand of Rs. 3.9 Lakhs confirmed by the adjudicating authority is also liable to be set aside.

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

9. The demand for service tax through show cause notice dated 23/10/2013 has been raised after procuring the copies of various balance sheets from the Income Tax Department. In response to the show cause notice M/s Lattice have submitted to the adjudicating authority, copies of all

relevant contracts, which have been executed for various customers. The adjudicating authority has scrutinized these contracts and has dropped the demand for the period prior to 01/07/2012. He held that the construction activities carried out by M/s Lattice were correctly classifiable under Works Contract Service for the period prior to 01/07/2012 even though the adjudicating authority did not have the benefit of the decision of the Hon'ble Supreme Court in the case of Larsen & Toubro. We have perused the decision of the Apex Court in the case of Larsen & Toubro (Supra). The Apex Court has categorically held that composite contracts which involve supply of goods as well as providing service will be liable for payment of service tax only under the category of Works Contract Service. For the period prior to 01/07/2012, the classification of service was required to be done and activities carried out are to be classified under Works Contract Service. The show cause notice issued on 23/10/2013 has proposed the demand of service tax under the categories of Commercial or Industrial Construction Service as well as Erection and Commissioning Service. As such since the classification has been held to be under WCS, we have find no infirmity in the findings of the adjudicating authority to the effect that the demand prior 01/07/2012 is liable to be set aside. Consequently we find no reason to discuss the ground raised by the Revenue in their grounds of their appeal to the effect that the entire demand raised in the show cause notice is covered within the period under Section 73 of the Act.

10. Next we consider the demand for the period commencing 01/07/2012. After the amendment to the Finance Act, 1994, there is no need for classification of service into various categories. The demand confirmed by the adjudicating authority for the service provided to Joint Stock Company FEAT is for the period 2012-13 and as such will be liable for

payment of service tax. The adjudicating authority has ordered payment of service tax to the extent of Rs. 3,67,303 against this service In this regard it has been pointed out by the Ld. CA that the liability for service tax under WCS is required to be determined after granting the benefit of Notification No. 24/2012 dated 20/06/2012. If such benefit is extended, the liability to service tax will come down and the claim of Ld. CA is that said service tax, after abatement, stands already paid by M/s Lattice.

11. We are of the view that the liability for service tax under WCS in respect of the activity carried out to Joint Stock Company is to be re-determined after extending the benefit of abatement under Notification No. 24/2012. When said benefit is extended the ultimate demand of service will come down from Rs. 3.67 lakh confirmed by adjudicating authority. We direct the original adjudicating authority to verify such payment of service tax claimed by the M/s Lattice.

12. In view of the above discussions we reject the appeal filed by the revenue. The appeal filed by M/s Lattice is allowed to the extent above. Consequently, benefit if any, will be entitled to M/s Lattice.

(Order dictated & pronounced in the open Court)

(Justice Dilip Gupta)
(President)

(V. Padmanabhan)
Member (Technical)

Rekha