IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/ Decision: 18/02/2019

Appeal No. ST/ 58802/2013-DB
[Arising out of Order-in-Appeal No. 128(VC) ST/JPR-II/2013 dated 15/04/2012 passed by the Commissioner of Central Excise-II JAIPUR]

M/s Choudhary Stone Crushing Co.
Plot No-b-15-16, riico Residency Colony, nr Dhola Maru Hotel Jaisalmer, Rajasthan ....Appellant

Vs.

Commissioner of Central Excise and Service Tax-Jaipur-II ......Respondent

Appearance
Sh. O P Agarwal, Advocate for the appellant
Sh. G R Singh, DR for the respondent

CORAM: **Hon'ble Justice Shri Dilip Gupta, President**
Hon'ble Shri V. Padmanabhan, Member (Technical)

Final Order No: 50288/2019

Per V. Padmanabhan

1. The appeal is directed against the Order-in-Appeal No. 128(VC) ST/JPR-II/2013 dated 15/04/2012. The appellant was engaged in providing various types of construction services during the period from 2006-07 and 2007-08. Revenue was of the view that the activities undertaken would be liable for service tax under the categories of (i) Commercial or Industrial Construction Services (CICS) and (ii) Repair and Maintenance Services. Show Cause Notice dated 13.05.2009, was issued proposing demand of service tax under

above two categories. The demands raised as well as the nature of work executed are summarised below;

SN	Nature of work	Period	Value (Rs)	S. Tax demanded(Rs)
a.	Construction of RCC Foundation Transformer Plinth, control room and office building	2006-07 & 2007-08	2,19,55,530/-	8,87,516/-
b.	Construction of roads	2006-07 & 2007-08	3,40,13,600/-	13,84,814/-
c.	Repair of road work	2007-08	2,83,900/-	11,580/-
d.	Construction of 17 RCC foundations castings	2006-07	1,17,00,000/-	4,72,586/-
e.	Excavation, laying of pipeline and refilling	2006-07	1,61,53,888/-	19,77,236/-
			Total	**47,33,732/-**

2. After consideration of the submissions made by the appellant the Adjudicating Authority vide the impugned order, upheld the demand for service tax under the two categories proposed, after grant of abatement in terms of Notification No 1/2006-ST dated 1/03/2006. However, in respect of the work carried out towards laying of pipelines, for which the pipe is supplied by the customers, the abatement was also denied. The demand confirmed in the impugned order is challenged in the present appeal.

3. Ld. Consultant appearing for the appellant submits that the entire demand for service tax raised is not justified and he advanced the following arguments;

(i) In respect of nature of work carried out and listed in the table (in para 1 supra) under (a),(b), (d), which are in the nature of civil constructions, he submitted that such services are composite services and in view of the decision of the Hon'ble Supreme Court in case of **Larsen and Turbo Ltd. Reported at [2015 (39) STR 913(SC],** no service tax will be liable to be paid for the period upto 31/05/2007. Even for the period with effect from 1/06/2007, he submitted that the Apex Court has decided that such services will be classifiable only under the Works Contract Service (WCS) with effect from introduction of such service i.e. on 01/06/2007. The learned Consultant further submitted that the demand in the case has been raised under the category of Commercial or Industrial Construction Service and the same cannot be ordered for payment under WCS in view of decision of the Tribunal in the case of **Ashish Ramesh Dasarwar vs Commissioner [2017 (TIOL) 3230-CESTAT-MUM]**

(ii) In respect of work carried out towards repair of roads, he submitted that the same arguments are advanced by relying on the *Larsen and Turbo* case since the repair of roads was also Composite Service.

(iii) With reference to the work carried out for laying of pipelines, he submitted that the abatement has been denied by the Adjudicating Authority since the pipes were supplied by the customer.

4. He relied upon on the decision of Hon’ble Supreme Court in case of **CST Bhayana builders Pvt. Ltd. reported in [2018-TIOL-66-SC-ST]** and submitted that the denial of abatement was not justified. He further advanced the argument that for laying of pipelines, the appellant supplied necessary materials and hence the activity would be rightly classified under WCS and reiterated the arguments already advanced.

5. Ld AR justified the impugned order.

6. We have heard both sides and perused the appeal records.

7. The activity of construction of foundation roads etc., are in the nature for Composite Service in which the appellant was required to supply the materials to be used in the construction activity. Such composite service is to be classified only under the Work Contract Service introduced with effect from 1/06/2007, in view of the decision of the Hon’ble Supreme Court in case *of Larsen and Turbo (supra).* By following the decision of the Apex Court, we set aside the demand for service tax for the period upto 31/05/2007.

8. For period commencing on 1/06/2007, the composite services would be liable for classification under Works Contract Service only. But we note that Show Cause Notice has proposed the demand for service tax under the category of Commercial and Industrial Construction Service as well as

Repair and Maintenance Service. Hence we are of the view that the confirmation of demand under the category of WCS will not be proper particularly in view of the decision of the Tribunal in case of ***Ashish Ramesh Dasarwar*** *(supra*) wherein Tribunal has taken the view that demand for Service Tax is to be set aside if the Show Cause Notice proposed a classification different from WCS for construction activity;

> *"6. As regards the period after 1.6.2007, since the demand was raised under 'commercial or industrial construction service, whereas admittedly the service is correctly classifiable under work contract service, demand raised under wrong head of service cannot sustain."*

9. . Consequently, we set aside the demand for service tax made under the (CICS) category for Construction of foundation/ roads as well as repair of roads.

10. The demand has also covered the activity of laying pipes supplied by the customers. The Adjudicating Authority has ordered the payment of service tax under the category of Commercial or Industrial Construction Service, but denied the abatement. The plea of the appellant in the present appeal is that such activity would also be in the nature of composite service and will be liable for classification only under the WCS. To a specific query from the Bench, learned Consultant submitted that the relevant contracts executed are not available for perusal of the Bench.

11. We are of the view that to take a final view in respect of liability of service tax for the activity of laying of pipelines, the relevant contracts executed are required to be verified. For such purpose, we set aside the demand and remand the matter to the Adjudicating Authority to take a *de Novo* decision only on this activity. He is directed to peruse the relevant contracts and take a *de novo* decision regarding the nature of activity and its classification. He will also keep in view the decisions of Hon'ble Supreme Court in case of *Larsen and Turbo* as well as *Bhayana Builders* before taking a final view in this matter.

12. In view of the above discussions, we set aside the demand for service tax. The learned Adjudicating Authority will pass *de novo* order extending the opportunity to the appellant only in respect of the activity of laying of pipelines.

(Dictated and pronounced in open court)

(Justice Dilip Gupta)
President

(V. Padmanabhan)
Member(Technical)

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