IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
New Delhi – 110 066.

PRINCIPAL BENCH – COURT NO. IV

Service Tax Appeal No. 54443-54444/2014-DB

(Arising out of Order-in-Appeal No. BPL-EXCUS-000-APP-328/13-14 dated 26.3.2014 passed by Commissioner (Appeals), Central Excise, Bhopal)

Mukesh Saini — Appellant
397, East Niwarganj,
Jabalpur, MP

Vs.

Commissioner of Central Goods & Service Tax, Excise & Customs, Bhopal — Respondent
178, Bhagya Bhavan
M.P. Nagar, Zone-II, Bhopal (M.P.)

Appearance :

Shri Akshat Shrivastava, Advocate - for the appellant

Shri G.R. Singh, D.R. - for the respondent

CORAM: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Bijay Kumar, Member (Technical)

Final Order No. 50439-50440/2019

Date of Hearing: 26/03/2019
Date of Decision: 26/03/2019

Per Archana Wadhwa:

Both the appeals are being disposed of by a common order as the issue involved is identical.

2. The lower authority have confirmed the service tax demand of Rs. 21,25,130/- and of Rs. 1,79,487/- respectively along with confirmation of interest and imposition of penalties.

3. After hearing both the sides duly represented by Shri Akshat Srivastava, learned Counsel and Shri G.R. Singh, learned Departmental Representative, we note that the demand is for the period April 2007 to March, 2011. The demand for the period October, 2007 to March 2008 has been confirmed by denying the benefit of abatement of 67% claimed by the assessee. It is further seen that one Order-in-Original dated 28.2.2013 confirmed the demand under commercial or industrial construction services whereas the other Order-in-Original dated 12.9.2013 confirmed the service tax under the category of works contract service. As per the appellant, their services were falling under the category of works contract services and as per the declaration of law by the Hon'ble Supreme Court in the case ***CCE Vs. Larsen & Toubro Ltd.*** – 2015 (39) STR 913 (SC), the works contract services were not liable to service tax prior to 1.6.2007.

4. Learned Authorised Representative appearing for the Revenue submits that prior to October, 2007 the appellants were not even registered with the Revenue and when they registered, though started paying the service tax on the gross amount, after availing 67% abatement, which was not admissible to the assessee.

5. We find that the entire facts are required to be examined afresh along with the legal issue, in the light of Supreme Court's decision in the case of ***Larsen & Toubro*** referred supra. Inasmuch as the factual position including agreements entered into between the appellant with their clients are required to be examined, we deem it fit to set aside the impugned order and remand the matter to original adjudicating authority for fresh decision. Needless to say that the appellants would be given an opportunity to put forth their case.

6. As the matter stands remanded, all the other issues, which the appellant may chose to contest including the issue of limitation is kept open for the original adjudicating authority to be decided afresh.

7. Both the appeals are also allowed by way of remand.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

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