CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court - I

Appeal No.	Appellant	Respondent	Impugned Order-in-Original
ST/453/2008	CCCE & ST, Visakhapatnam - I	SBEC Projects Pvt Ltd	03/2008-09 (RS) dt.12.6.2008 passed by CCCE & ST, Visakhapatnam - I
ST/525/2008	SBEC Projects Pvt Ltd	CCCE & ST, Visakhapatnam - I	

Appearance

Shri V. Ravindranath, Advocate for the Appellant.

Shri N. Bhanu Kiran, Asst. Commissioner/AR for the Respondent.

Coram:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 08.02.2019
Date of Decision: 08.02.2019

FINAL ORDER No. A/30225-30226/2019

[Order per: M.V.Ravindran.]

1. These two appeals are directed against Order-in-Original No. 03/2008-09 (RS) dated 12.06.2008.

2. Revenue as well as the assessee have appealed against the said orders and have preferred these appeals.

3. Heard both sides and perused the records.

4. On perusal of records, it transpires that the issue is regarding demand of service tax liability on the appellant/ assessee for the period September, 2004 to December, 2006 towards tax under category of “Commercial or Industrial Construction Services” along with interest and for the penalties. It is the case of the revenue in show cause notice that the activity undertaken by the appellant would amount to rendering of services which is taxable while it is the case of the appellant that they had constructed hospital building which would fall under category of taxable services.

5. On consideration of the submissions made by both sides, we find that entire activity of construction of the hospital has taken place between September, 2004 and December, 2006. On perusal of the documents which were produced by the appellant and the VAT returns filed by the appellant/ assessee to the Government of Andhra Pradesh, Central Taxes department, it indicates that entire contract was works contract wherein services and materials were consumed. If it is works contract, the law is well settled by the judgment of the Hon'ble Supreme Court in the case of Larsen & Toubro Ltd. In the said judgment their Lordships have held that any activity of works contract prior to 01.06.2007 is not taxable under any other head. Accordingly, following the same, we hold that the impugned order is unsustainable to the extent contested by the appellant/ assessee in these appeals.

6. As regards the revenue's appeal revenue is only contesting the lower imposition of penalty by the adjudicating authority. Since on merits itself entire case is held in favour of the appellant, nothing survives in the appeal filed by the revenue.

7. Accordingly, we hold that the impugned order itself is not sustainable and is liable to be set aside and we do so. Assessee's appeal is allowed and revenue's appeal is rejected.

(Dictated and pronounced in the open Court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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