CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT NO. – I

Service Tax Appeal No. 2094 of 2012

(Arising out of **Order-in-Appeal** No.35/2012(G) ST dated 09.07.2012 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Guntur)

R. Bala Someswara Rao, .. APPELLANT
Contractor
H.No. 54-14/7-10, Road No. 13,
Bharathi Nagar,
Vijayawada,
Andhra Pradesh – 520 008.

VERSUS

Commissioner of Central Tax .. RESPONDENT
Guntur
P.B.No. 331, C.R.Building,
Kannavari Thota, Guntur,
Andhra Pradesh – 522 004.

APPEARANCE:
Shri B. Seeta Ramaiah, Consultant for the Appellant.
Shri V Srikanth Rao, Authorized Representative for the Respondent.

CORAM: HON'BLE Mr. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE Mr. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30300/2023

Date of Hearing:07.09.2023
Date of Decision:07.09.2023

[ORDER PER: BENCH]

Heard the parties. The issue in this appeal is whether the appellant is liable to pay service tax in respect of work done in the nature of construction of various elements of the Petrol Bunks for the oil company along with materials. The period in dispute is from 10.09.2004 to 11.12.2006.

2. Show cause notice dated 20.07.2007 was issued pursuant to data from the service receiver – Indian Oil Corporation Ltd., (IOCL), where in they informed Revenue all the work done by this appellant and also being construction of retail outlets for IOCL in the state of Karnataka and Andhra Pradesh. The appellant have done the construction of civil structures, fabrication and erection of canopies, installation of tanks, piping, asphalting, paver block laying, electrification etc.

3. Based on the information received by Revenue from the service receiver, show cause notice dated 20.07.2007 was issued alleging suppression on the part of the appellant proposing to demand service tax of Rs. 7,21,244/- after allowing abatement of 67% on the gross amount received by the appellant including CESS. The show cause notice

adjudicated, ex-parte, as the appellant did not filed any reply and the proposed demand was confirmed along with equal amount of penalty under Section 78. Further penalty was also imposed under Section 76, 77 for non-registration with the Department and also under Section 77 for failure to file returns, for each return.

4. Being aggrieved, appellant preferred appeal before the Commissioner (Appeals) vide impugned Order-in-Appeal. Commissioner (Appeals) was pleased to dismiss the appeal by upholding the Order-in-Original.

5. Being aggrieved, appellant is before this Tribunal.

6. Learned Counsel, interalia, urges that the issue is fully covered by the ruling of Hon'ble Supreme Court in the case of Larsen & Toubro Vs Union of India [2015 (39) STR 913 (SC)], wherein, it has been held that prior to 01.06.2007, when the category of works contract service was introduced in service tax, any composite service where transfer of material is involved is not taxable before 01.06.2007. Accordingly, prays for allowing the appeal with consequential benefits.

7. Learned AR for Revenue relies on the impugned order.

8. Having considered the rival contentions, we are satisfied that the appellant have executed works contract/composite contract, including transfer of materials, which have been used in the construction activity. Contention of the appellant is also supported from the payment advises issued by IOCL where in they have shown deduction from the gross amount towards income tax and works contract tax (sales tax). Accordingly, it is evident that appellant have done works contract service and hence we hold that appellant is not liable to service tax as the period of dispute is prior to 01.06.2007. Accordingly, the appeal is allowed and the impugned order is set aside with consequential benefits in accordance with the law.

(Order dictated and pronounced in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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