IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Service Tax Appeal No.76366 of 2016

(Arising out of Order-in-Original No.59/S.Tax/Commr./2016 dated 13.04.2016 passed by Commissioner of Central Excise & Service Tax, Ranchi)

M/s Heavy Engineering Corporation Limited
Plant Plaza Road, Dhurwa, Ranchi-834003

Appellant

VERSUS

Commissioner of CGST & Excise, Ranchi
C.R.Building, 5A Main Road, Ranchi-834001

Respondent

WITH

Service Tax Appeal No.70846 of 2013

(Arising out of Order-in-Original No.43/S.Tax/Commr./2016 dated 28.03.2013 passed by Commissioner of Central Excise, Ranchi)

M/s Heavy Engineering Corporation Limited
Plant Plaza Road, Dhurwa, Ranchi-834003

Appellant

VERSUS

Commissioner of CGST & Excise, Ranchi
C.R.Building, 5A Main Road, Ranchi-834001

Respondent

Appearance:

Shri S.P.Majumdar , Advocate for the Appellant
Shri J.Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI ASHOK JINDAL JUDICIAL MEMBER
HON'BLE SHRI K.ANPAZHAKAN, TECHNICAL MEMBER

DATE OF HEARING : 01.03.2023
DATE OF DECISION : 01.03.2023

FINAL ORDER NO…75127-75128/2023

Per Ashok Jindal :

The appellants are in appeals against the impugned orders.

2.1 Facts of the case are that the appellant was awarded to contract one for supply of machineries under the head "Erection, Installation &

Commissioning Service" for setting the coal heavy machines for M/s Northern Coalfields Limited. The scope of work is as under :

> *"4.2 The scope of work covers all the related civil and structural works, detail designing of the same and successfully commissioning of the civil and structural works for handling over the plant. This shall inter-alia, include the following :*
>
> *4.2.1 Design & Engineering of all civil and structural works of the plant.*
>
> *4.2.2 Execution of all civil/structural works consisting of the following :*
>
> *a) Detailed survey of site including contour map preparation.*
>
> *b) All the geo-technical investigation required for the work including furnishing the geo-technical report, Collection of hydrological, blasting and rainfall data including any other data related to design and execution.*
>
> *c) Preparation of construction site.*
>
> *d) Supply of fabricated structural steelwork and shaped rebars as required supplied by him, whether such design, drawing or other particulars have been approved by customer or not."*

2.2 The appellant executed the work during the period from October, 2006 to September, 2007 and paid service tax by claiming the benefit of Notification No.1/2006-ST dated 01.03.2006 i.e. 67% abatement from the gross value of supply to their service recipient.

2.3 Revenue is of the view that the appellant is not entitled for the benefit of the said Notification as it is purely a service contract. Therefore, show-cause notice was issued on 04.12.2008 by invoking extended period of limitation for demand of differential service tax from the appellants and to impose penalties on them.

2.4 Another show-cause notice was also issued to the appellants for the period October, 2007 to March, 2010 on 17.04.2013 to demand of service tax from the appellants by denying the benefit of Notification No.1/2006-ST dated 01.03.2006

2.5 As the issues involved in the show-cause notices are common, both the appeals are disposed of by a common order.

3. The Ld.Counsel of the appellants, submits that as prior to 01.06.2007, the proper classifications of the service in question was "Works Contract Service", therefore, for the period prior to 01.06.2007, no service tax is payable by the appellants under "Erection, Installation & Commissioning Services". As the show-cause notice has been issued to deny the benefit of exemption Notification No.1/2006-ST dated 01.03.2006 for the services provided by the appellant under "Erection, Installation & Commissioning Services", therefore, show-cause notice is barred by limitation. He also submits that the issue has already been settled by the Hon'ble Apex Court in the case of Commissioner of Central Excise & Customs, Kerala Vs. Larsen and Toubro Limited reported in 2015 (39) STR 913 (SC), which has been re-affirmed by the Hon'ble Apex Court in the case of Total Environment Building Systems Pvt. Ltd. Vs. Deputy Commissioner of Commercial Taxes reported in 2022 (63) GSTL 257 (SC), wherein it has been held that prior to 01.06.2007, if any service provided by the assesse along with materials, the same have appropriately classifiable under "Works Contract Service" and prior to 01.06.07, "Works Contract Service" was not in statute. In that circumstances, service tax was not payable by the appellants for the period 01.06.2007. For the period post 01.06.2007, it is the contention of the ld.Advocate that they have claimed the benefit of Notification No.01/2006-ST dated 01.03.2006 under the category of "Erection, Installation & Commissioning Services". In that circumstances also, if the demand is not under "Works Contract Service", no service tax is payable by the appellants. He further submits that the second issue is barred by limitation as the issue regarding taxability for all the activities undertaken by the appellants was in dispute.

4. On the other hand, the ld.Authorised Representative for the Revenue opposes the contention of the ld.Counsel for the appellants and submitted that the agreement between the appellants and the service recipient, was purely for services. If they are entitled for

abatement, the value of machines supplied by the appellants are required to be added in the gross taxation value of services. Therefore, the appellant is not entitled for the benefit of Notification No.1/2006-ST dated 01.03.2006.

5. Heard both sides and considered the submissions made from both sides.

6. After going through the scope of works, there is not dispute, the services in question have been supplied by the appellants along with the materials, for which, the appropriate classification is "Works Contract Service", which came into service tax net from 01.06.2007. As per the decision of the Hon'ble Apex Court in the case of Larsen & Toubro Limited (cited supra), this issue has been clarified and after going through the said judgement, we hold that for the period prior to 01.06.2007, the demand under the category of "Erection, Installation & Commissioning Services", was not sustainable as the appropriate classification is "Works Contract Service". Admittedly, no demand has been made for the period prior to 01.06.2007 under the "Works Contract Service". Therefore, the demand of service tax from the appellants does not survive prior to 01.06.2007.

7. For the period post 01.06.2007, the said issue is before us, we hold that the appellant is entitled for the benefit of Notification No.01/2006-ST dated 01.03.2006. The said Notification narrates that if the assessee supplied the services along with materials and the value of service cannot be quantified, in that that circumstances, the assessee is entitled for 67% abatement of the total service provided by the assese. The same is the proportion under "Works Contract Service", wherein the assesse is liable to pay service tax on 33% of the gross value of service provided. In that circumstances also, the appellant has paid service tax of 33% of the gross value of service provided in question. In that circumstances, we hold that the demands against the appellants are not sustainable.

8. We further hold that all the demands are barred by limitation as the issue of taxability was in dispute during the impugned period and

the show-cause notices were issued by invoking extended period of limitation.

9. As discussed above, we do not find any merit in the impugned orders and the same are set aside.

10. In the result, the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-

(Ashok Jindal)
Member (Judicial)

Sd/-

(K.Anpazhakan)
Member (Technical)

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