CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Service Tax Appeal No. 88385 of 2014

(Arising out of Order-in-Original No.39/ST-II/RS/2014 dated 31.03.2014 passed by Commissioner of Service Tax-II, Mumbai)

M/s Patel Engineering Ltd. **...Appellant**
Patel Estate Road, Jogeshwari (W), Mumbai-400102.

VERSUS

Commissioner of Service Tax, Mumbai-II **.....Respondent**
4th Floor, New Central Excise Building, Maharshi Karve Raod, Churchgate, Mumbai-400020.

Appearance:

Shri D. H. Nadkarni, Advocate for the Appellant
Shri Piyush Badhe, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85915/2023

Date of Hearing: 09.11.2022
Date of Decision: 08.05.2023

PER : S.K. MOHANTY

The appellants herein, are engaged in providing services under the taxable category of Commercial or Industrial Construction Service, Construction of Complex Service, Consulting Engineer Service etc., and are duly registered with the jurisdictional service tax authorities for the said purpose. The Department in this case, had gathered specific information that the appellants had not paid service tax on the said services provided by them. Accordingly, investigation was conducted, which culminated into the show cause notice dated 01.09.2006, seeking confirmation of service tax demand on the appellants. The matter arising out of the SCN was adjudicated vide the impugned order dated 31.03.2014, wherein the learned Commissioner of Service Tax, Mumbai-II has confirmed service tax demand along with interest and also imposed penalties under Section 76, 77 and 78 of the Finance Act, 1994. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

2. Heard both sides and examined the case records.

3.1 With regard to dredging service, the appellants were awarded the contract for 'Construction of Weir on River Krishna downstream of Srisailam Dam in roller compacted concrete' by Andhra Pradesh Power Generation Corporation Limited. The period involved in the said case was up to June 2005. Schedule appended to the work order had specifically provided that *"Sales Tax on materials and Works Contract Tax levied by the Government is to be paid by the contractor and he/they should include these charges in his/their quoted rates".* On perusal of the documents available in the case file, we find the appellants had in fact purchased the goods used for completion of the assigned task. Thus, it is a case of works contract, which specifically brought into the statute book with effect from 01.06.2007. Even prior to such effective date, the services involving both provision of service and supply of goods on payment of VAT shall not fall under the category of any other defined taxable service and same should be considered as works contract service only. In this context, the Hon'ble Supreme Court in the case of Commissioner of C.Ex. & Customs, Kerala V/s. Larsen & Tubro Ltd. – 2015 (39) S.T.R. 913 (S.C.) have held that irrespective of classification of service, when the service involves supply of goods on payment of VAT, the same should be classified as works contract service alone. Since, the construction activity provided by the appellant was for the period June 2005, the same cannot be liable for payment of service tax inasmuch as works contract service was brought into the taxing net with effect from 01.06.2007. Therefore, we are of the considered view that the service tax demand of Rs.3,22,401/- confirmed in the impugned order cannot be sustained.

3.2 As regards the demand of Rs.2,31,397/- confirmed in the impugned order for provision of consulting engineer service, we find that during the course of investigation, the appellants vide their letter dated 15.07.2006 had confirmed regarding payment of service tax in respect of the services provided to M/s Pratibha Industries Limited. Further, we also find that during the course of adjudication and in the appeal memorandum filed before the Tribunal, the appellants have not specifically contested such demand confirmed in the impugned order. Thus, we are of the view that such demand of Rs.2,31,397/- confirmed in the impugned order is sustainable and the appeal filed by the appellants to such extent is liable for dismissal.

3.3 With regard to the service tax demand confirmed on "Commercial and Industrial Construction Service", we find that the services provided by the appellants involved both execution of the assigned work as well as for supply of material. It is also an admitted fact that the materials used in the execution of the work were procured by the appellants on payment of appropriate VAT/Sales Tax. Thus, it is evident that the service provided by the appellants should be categorized as works contract service. Since, such services were provided by the appellants prior to the period 01.06.2007, as per the ratio of the judgment of Hon'ble Supreme Court in the case of Larsen and Toubro Ltd. (supra), no service tax demand shall be fastened on the appellants. Hence, an amount of Rs.4,27,623/- confirmed in the impugned order cannot be sustained.

3.4 As regards the service tax demand of Rs.9,00,733/- and Rs.22,67,565/- attributable to the taxable services namely Consulting Engineer Service and Goods Transfer Agency Service respectively, we find that the appellants are not contesting such demands confirmed in the impugned order. However, the appellants have pleaded that imposition of penalties in the impugned order cannot be sustained, since there was reasonable cause for non-payment of service tax by the appellants. We find that there was ambiguity with regard to payment of service tax by the recipient of the said services, under reverse charge mechanism. There were also divergent views expressed by the judicial forums with regard to payment of service tax by the person, other than the service provider. Since, the appellants have accepted their liability; we are of the view that this is a fit case for invocation of the provisions of Section 80 *ibid* for non-imposition of penalties. Therefore, the penalties imposed in the impugned order under Sections 76, 77 and 78 *ibid* are liable to be set aside.

4. In view of the forgoing discussions, the appeal filed by the appellants is disposed of in following manner:-

Description of Services provided Received	**Service Tax demanded confirmed in impugned order**	**Order passed by the Tribunal**
Dredging Services	3,22,401/-	Demand set aside as per discussions at para 3.1 above
Consulting Engineer's services	2,31,397/-	Demand confirmed as per discussions at para 3.2 above
Commercial or Industrial Construction Services	4,27,623/-	Demand set aside as per discussions at para 3.3 above
Transport of Goods by Road Services	20,67,565/-	Demand confirmed as per discussions at para 3.4 above
Consulting Engineer's Services (Import of Services)	9,00,733/-	Demand confirmed as per discussions at para 3.4 above

4.1 With regard to the penalties imposed under Sections 76,77 and 78 *ibid* in the impugned order, by invoking the provisions of Section 80 *ibid,* we set aside the same, holding that there was reasonable cause for non-payment of service tax during the relevant period.

5. In terms of the discussions made herein above, the appeal is partly allowed in favour of the appellant.

(Order pronounced in the open court on 08.05.2023)

(C J Mathew)
Member (Technical)

(S.K.Mohanty)
Member(Judicial)