(2024) 05 CESTAT CK 0019

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : ?Service Tax Appeal No. 10889 Of 2017

Anupam Industries Ltd — APPELLANT

Vs

C.C.E. & C-Anand — RESPONDENT

Date of Decision : 15-05-2024

Acts Referred:

Citation : (2024) 05 CESTAT CK 0019

Hon'ble Judges : Somesh Arora, Member (J);C.L. Mahar, Member (T)

Bench : Division Bench

Advocate : Saurabh Dixit, Anand Kumar

Final Decision : Allowed

Judgement

Somesh Arora, Member (J)

1. The Appellant is engaged in the manufacture and sale of cranes. During the course of and as part of such sale, the cranes are also required to be installed at customer site. The short issue involved in the present dispute is, whether the Appellant is liable to pay Service Tax, when Central Excise duty / Sales Tax had been paid on the gross value of the purchase order for crane, including Erection/ commissioning charges and transport etc. That the Appellant during the material period supplied two cranes to M/s. M/s. Lucina Land Development Ltd and M/s. Supertech Ltd under purchase order No. 3266000471 dated. 05.02.2011 and order No. 4700002996 dated. 03.07.2010 respectively, under obligation to manufacture, transport, deliver, erect and installation of cranes at the buyer's premises. The Appellant asserts that it had also discharged Excise duty and sales tax on the total sales value which included the erection, installation and commissioning of such cranes. It is a finding recorded in the abovementioned OIO dt.9.1.16 that the Appellant had recovered charges for crane supply inclusive of errection/commissioning charges (as per PO) and on the entire composite value, CEX/Sales Tax admittedly stood paid. No further charges over and above invoice value on which CEX duty/sales tax already stood paid, was

recovered by the Appellant from their customers and no evidence to this effect is adduced by the revenue as well. The SCN had quantified demand of Service Tax on "entire sale value of cranes" since as per department, erection and commissioning charges were included therein, and no separate breakup for the same was available.

2. Appellant have in their appeal memo and synopsis during the course of hearing sought to raise various grounds and relied upon the following case law:

• Allengers Medical Systems Limited 2009 (14) S.T.R. 235 (Tri.-Del.)

• Aalidhara Textool Engineers Pvt. Ltd 2022(12) TMI 11

• M/s. Vishwanath Project Limited 2019(11)TMI 675- CESTAT Hyd

• M/s. Ballarpur Industries Ltd 2007(215) ELT 489 (SC)

• M / s Toyo Engineering India Ltd 2006(201) ELT 513 (SC

• M / s Alidhara Texspin Engineers 2010(20)STR 315 (Tri-Ahm

• M / s Neo Structo Construction Limited 2010(19) STR 361 (T)

The grounds mainly have been taken to buttress that the goods were supplied. Point of limitation was also raised as in the instant case period involved is 2010-2011 and show cause notice issued on 15.10.2015 and legal interpretations were involved due to conflicting case law.

3. Learned AR on the other hand, seeks to rely upon the impugned decision which is Order-In-Appeal and on various judgments relied therein to indicate that the service tax is chargeable on any taxable service and the gross amount charged by the service provider for such service which in this case is Erection Commissioning of the crane including its transportation etc is taxable. Therefore the department was justified to tax the gross amount. On being asked to both sides to justify the stand in post L & T decision period which was reported in COMMISSIONER OF CENTRAL EXCISE AND CUSTOMS VS. LARSEN & TOUBRO LTD AND OTHER-2015 (8) TMI 749 (S.C.). In which, it was pointed out that the composite contract could only be taxed under “Works Contract Services” w.e.f. period 01.06.2007 onwards. And whether the demand was raised properly in show cause notice as per contours of above decision or should have been raised under Works Contract Service.

4. Learned Advocate placed reliance on the decision of 2019 (11) TMI 675-CESTAT, Hydrabad in the matter of VISHWANATH PROJECTS LTD. VS. COMMISSIONER OF SERVICE TAX, HYDRABAD in which in para 15 it was held as follow:-

“15. A plain reading of the above shows that the contract involved both supply of material and installation and commissioning of the equipment with no clear demarcation/vivisection between the service component and the material component thereof. We, therefore, do not agree with Ld. DR that the contract can be vivisected, in this case and the demand has been raised on the entire value of the contract including the material part of it because the appellant failed to provide the break up. Had there been a break up of the material and the service components in the contract itself, the demand would have been raised on the service component ignoring the material. There is nothing on record which is placed before us which shows that there are two different contracts or a single contract with two separate distinct components for supply of material and rendition of services. In view of the above, we find that the contract in question is a composite works contract. Composite works Contract involve both rendition of service and deemed sale/sale of the materials used in rendering such services. The Hon'ble Apex Court has observed in the case of Larsen & Toubro (supra) that works contract is a separate specie of contract known to the trade and commerce distinct from a contract for supply of goods or a contract for supply of services. In view of the above, we have no hesitation in concluding that the contract in question is a composite works contract and could have been taxed only under the head of "Works Contract Services" post 01.06.2007. It is not in dispute that the entire period in question is post 01.06.2007. Therefore, the demand if any could have been raised under the Works Contract Service. The demand in this case has been made under Erection, Commissioning and Installation Service. ECIS does not include the contract where transfer of materials is involved. Since the demand has been raised under ECIS and the nature of contract does not fall under this category, the demand on this head it has to fail. Accordingly, the demand is set aside to this extent on this ground alone”.

5. Learned A.R indicated that this aspect was not examined by the authorities below because of non-availability of decisions at the time of passing of order

6. We find that this is the matter is old and benefit of L & T case as well as VISHWANATH PROJECT LTD (cited supra) by the appellant was not available to the Appellate Authority. The matter deserves therefore to be remitted back to the Appellate Authority to examine and comment on applicability of various case law which are now available as also the nature of contract and whether same were divisible or composite. Appellant shall be free to advance its arguments and Appellate Authority shall consider the case law (including since the time of settling of position by the Apex Court through L & T case (cited supra) and its applicability) as also if contract conditions indicate a composite contract. While considering limitation, it will also consider the arguments, if any, put forth by the appellants.

7. Appeal is allowed by way of remand.

