(2015) 07 CESTAT CK 0012

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Stay Application No. 57057 Of 2013, Service Tax Appeal No. 56570 Of 2013

CST, Delhi — APPELLANT

Vs

M/s Bagai Construction — RESPONDENT

Date of Decision : 14-07-2015

Acts Referred:

Citation : (2015) 07 CESTAT CK 0012

Hon'ble Judges : G. Raghuram, J;R. K. Singh, Technical Member

Bench : Division Bench

Advocate : B.B. Sharma, Narendra Singhvi

Final Decision : Dismissed

Judgement

1. Stay petition along with appeal has been filed by Revenue against the Order-in-Appeal No. 223/ST/D-1/2012 dated 22.11.2012 in terms of which

service tax demand of Rs.13,25,005/- confirmed along with interest and penalties by the primary adjudicating authority was set aside.

2. The issue involved in this case essentially is that the appellant paid service tax under the Works Contract Service @ 2.06% under Composition

Scheme on the ground that service was rendered before 1.3.2008 although the payment was received after 1.3.2008, while the primary authority held

that the correct rate of tax was 4.12% which was the rate applicable on the date of receipt of payment. The impugned demand arose as a result of

the above dispute. It is contended by the respondent that the issue is no longer res integra and is settled by Delhi High Court in the case of Vistar

Construction (P) Ltd. Vs. Union of India & Ors - 2013-TJOL-73-HC-DEL-ST.

3. The Id. DR agreed that the said judgement of Delhi High Court covers the

issue.

4. We have considered the respondent's contention. We find that in the case of Vistar Construction (supra), the Delhi High Court has held that ""the

taxable event, in so far as service tax is concerned, is the rendition of the service. That being the position, the taxable events in the present writ

petition had admittedly occurred prior to 1.3.2008. At that point of time the rate of service tax applicable in respect of the services in question was 2%

and not 4%, which came into effect only on or after 1.3.2008. Therefore the rate of tax applicable on the date of which the services were rendered

would be the one that would be relevant and not the rate of tax on the date on which payments were received."" The Delhi High Court in that

judgement further held that the ""TRU Circular F.No. 545/6/2007- TRU dated 28.4.2008 is contrary to law as declared by the Supreme Court and

therefore has no existence in the eyes of law"".

5. In the light of the issue having been settled in favour of the respondent by the said judgement of Delhi High Court in the case of Vistar Construction

(supra), we find no merit in the Revenue's appeal. Therefore the stay petition and appeal are dismissed.