

(2023) 08 CESTAT CK 0029

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 12552 Of 2013

G S Dodia

APPELLANT

Vs

Commissioner Of Central Excise & ST, Bhavnaga

RESPONDENT

Date of Decision : 11-08-2023

Acts Referred:

Citation : (2023) 08 CESTAT CK 0029

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

Bench : Division Bench

Advocate : Amal Dave, Tara Prakash

Final Decision : Allowed

Judgement

Ramesh Nair, Member (J)

1. The present appeal is filed against the Order-In-Original No. 07/BVR/Commissioner /2013 dated. 30.04.2013.

2. The brief facts of the case are that on the basis of information that the appellant is not paying service tax on the taxable service provided by them, an investigation was started against the appellant in summons proceedings and their records of last five years, such as written contracts / works orders, service tax return filed, ledger accounts, invoices raised were called for from them. Statements of Shri G.S. Dodia, Proprietor was recorded. During the course of an investigation, on scrutiny of the Bid documents/ work orders, the authorities were of the view that the appellant have provided services of Management, Maintenance or Repairs to various department. Accordingly, Show cause notice dated 17-04-2012, invoking extended period of limitation was issued to appellant directing to show cause as to why the service tax demand of Rs. 2,00,06,391/- be not raised on them along with interest and also for imposition of penalty. The appellant herein gave a detailed reply contesting the issue on merits as well as on limitation. The adjudicating authority after considering the submissions made by the appellant, by impugned Order-in-Original dated 30-04-2013 confirmed the

service tax demand and imposed penalty. Hence against the said order, the appellant is before us.

3. Shri Amal P. Dave, Learned Counsel appearing on behalf of the appellant submits that the appellant undertook the activity of conducting repairs of pipelines used for transporting drinking water, along with maintenance and repairs of civil structures. All these activities were undertaken for the Gujarat Water Supply and Sewage Board & Gujarat Water Resources Development Corporation. The Ld. Commissioner classified the said activities under Management, Maintenance or Repair Service and confirmed the Service tax under such category of service. The issue of classification of the activities in the nature of Repair, alteration, renovation or restoration of, or similar service in relation to, building or civil structure, pipeline or conduit has been settled by the Larger Bench of Hon'ble Tribunal in the case of Lanco Infratech Limited vs. CCE & ST., Hyderabad – 2015 (38)STR 709 (Tri. LB).

4. He further submits that the activity undertaken by the appellant is classifiable under Commercial and Industrial Construction Service falling under Section 65 (25b), whereby there is a specific entry covering Repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit. The Ld. Commissioner has thus erred in confirming the demand under Management, Maintenance or Repair service when the service was correctly classifiable under Commercial and Industrial Construction Service and was not eligible to Service tax qua the exclusionary clause.

5. He also submits that show cause notice did not specify as to which clause under Management, Maintenance or Repair service was invoked. Management, maintenance or repair service has 3 clauses which are for 3 different activities and the show cause notice has not pointed out or invoked any specific clause out of the 3. Therefore since the show cause notice did not specify the appropriate clause under which the demand was proposed to be raised, the demand being vague could not have been confirmed. He placed reliance on the following judgments.

(a) Swapnil Asnodkar – 2018(10) GSTL 479 (Tri. –Mumbai)

(b) Balaji Enterprises – 2020 (33) GSTL 97 (Tri. Del.)

6. He also argued that appellant was under a bonafide belief that since the activity was undertaken for the government and was in relation to providing drinking water to villages, which is a sovereign function of the State, the activity was not eligible to Service tax. Subsequently the Large Bench of Hon'ble Tribunal also held that the activity would more appropriate be classifiable under Commercial or Industrial Construction Service and if being undertaken for the Government for non-commercial purpose, would not be eligible to Service tax. Furthermore for the same period, for the same activity, for other assessee, the department has taken a view that the activities are covered by the retrospective exemption given by virtue of Notification No. 12/2012-ST dated 17.03.2012 and

not eligible to Service tax. Therefore in the overall circumstances of the case the appellant has not committed any fraud or misstatement so as to enable the department to invoke the extended period of limitation. The issue in the present case was a debatable one and had also undergone litigation before the being settled, thus the demand is time barred.

7. On other hand Shri Prabhat K. Rameshwaram, learned Addl. Commissioner (AR) of the Department, however, supported the impugned order.

8. We have considered the submissions made at length by both the side and perused the records. We find that the Larger Bench decision of the Tribunal in the matter of M/s Lanco Infratech (supra) was not available at the time of passing of the impugned order and as such Adjudicating Authority did not have the benefit of examination and applicability of the same to the facts of the present case. Therefore we are of the view that adjudicating authority must reconsider the entire matter based on the Judgments which were passed much after the impugned order passed by him.

9. Accordingly, we set aside the impugned order and remand the matter to the Adjudicating Authority. The appeal is allowed by way of remand to the Adjudicating Authority. Since this appeal is of 2013, the Adjudicating Authority shall pass denovo order within two months from the date of this order.