(2024) 01 CESTAT CK 0070

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 42490 Of 2014

M/S. East Coast Constructions & Industries Ltd APPELLANT

Vs

Commissioner Of Service Tax RESPONDENT

Date of Decision : 24-01-2024

Acts Referred:
Finance Act, 1994 — Section 75, 76, 77

Citation : (2024) 01 CESTAT CK 0070

Hon'ble Judges : P. Dinesha, Member (J);M. Ajit Kumar, Member (T)

Bench : Division Bench

Advocate : S. Akshaya, M. Selvakumar

Final Decision : Allowed

Judgement

P. Dinesha, Member (J)

1. This appeal is filed against the Order-in-Appeal No. 192/2014 (MST) dated 23.07.2014 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals), Chennai, wherein the first appellate authority has rejected the appeal filed by the taxpayer thereby upholding the findings of the original authority who vide Order-in-Original No. 95/2010 dated 31.12.2010 had confirmed the demand of Service Tax against the appellant under the category of "Erection, Commissioning and Installation" service, apart from appropriate interest under Section 75 and penalties under Sections 76 and 77 of the Finance Act, 1994.

2. Heard Ms. S. Akshaya, Ld. Advocate for the appellant, who would submit that the appellant had entered into a works contract with the Municipality for the execution of Chennai Metropolitan Water Supply and Sewerage Board Project in Kumbakonam, Tamil Nadu during the period from July 2003 to April 2006. She would thus contend that the above contract involved both provision of service of construction activity as well as supply of goods, which was indivisible in nature and hence, the decision of the Hon'ble Apex Court in the case of Commissioner of

Central Excise and Customs, Kerala v. M/s. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)] would squarely apply and hence, the impugned demand cannot survive. She would also rely on a recent Order of this Bench of the Tribunal in the case of M/s. Devi Constructions v. Commissioner of Central Excise and Service Tax, Salem [Final Order No. 40814 of 2023 dated 15.09.2023 in Service Tax Appeal No. 40954 of 2014 – CESTAT, Chennai] wherein, under similar circumstances, this Bench has deleted a similar demand after following the decision of the Hon’ble Supreme Court M/s. Larsen & Toubro Ltd. (supra).

3. Per contra, Shri M. Selvakumar, Ld. Assistant Commissioner, defended the orders of the lower authorities. He would invite our attention to various paragraphs of both the Order-in-Original as well as the impugned Order-in-Appeal, to contend that the demand raised and confirmed against the appellant was in order.

4. After hearing both sides, we find that the only issue to be decided by us is: whether the demand raised for the period earlier to 01.06.2007 and sustained in the impugned order is justified?

5.1 We have perused the documents placed on record. The Show Cause Notice, which is the starting point, clearly reveals that the period was from July 2003 to April 2006. At paragraph 3 of the Show Cause Notice, the issuing authority has worked out the total Service Tax after allowing abatement of 67% at Rs.3,98,763/-, which was proposed to be demanded and thereafter, vide Order-in-Original No. 95/2010 dated 31.12.2010, came to be confirmed.

5.2 By the above, it is clear that the Revenue has accepted that the service carried out by the appellant was in terms of the works contract and admittedly, the period is also prior to 01.06.2007 and hence, we agree that the issue involved in the above case is no more res integra as the same stands covered in favour of the taxpayer by the above ruling of the Hon’ble Apex Court in the case of M/s. Larsen & Toubro Ltd. (supra). We also note that this Bench in the case of M/s. Devi Constructions (supra) has followed the decision in M/s. Larsen & Toubro Ltd. (supra) since the period involved therein was also prior to 01.06.2007.

6. In view of our above discussions, we do not find any merit in the demand raised and upheld in the impugned order.

7. Consequently, we set aside the impugned order and allow the appeal with consequential benefits, if any, as per law.