(2021) 08 CESTAT CK 0118

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 1243 Of 2010

M/s Enexco Teknologies India Limited — APPELLANT

Vs

Commissioner, Service Tax — RESPONDENT

Date of Decision : 27-08-2021

Acts Referred:

Finance Act, 1994 — Section 65(105)(g), 65(105)(zzd), 65(105)(zzg), 68, 73, 75, 76, 77, 78
Cenvat Credit Rules, 2004 — Rule 16

Citation : (2021) 08 CESTAT CK 0118

Hon'ble Judges : Ashok Jindal, J;Sanjiv Srivastava, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal is directed against the order-in-appeal No. 217/MA/GGN/2010 dated 30.04.2010/03.05.2010 of the Commissioner (Appeals), Delhi-III. By the impugned order, Commissioner (Appeals) has upheld the order-in-original No. 33/ AKS/2008 dated 01.09.2008 passed by the Additional Commissioner, Service Tax, Delhi holding as follows:-:-

1. I confirm an amount of Rs. 13,22,959/- (Service Tax of Rs.12,97,019/- and Education Cess of Rs. 25,940/-) payable under Section 68 of the Finance Act, 1994. I order for recovery of the same from the party under Section 73 of the Finance Act, 1994. I also order for appropriation of an amount of Service tax Rs. 3,68,547/- already deposited by the party towards the above said demand of service tax.

2. I also order for recovery of interest from the party at the appropriate rate for the period by which payment of tax delayed under Section 75 of the Finance Act, 1994. I appropriate an amount of Rs. 1,21,408/- already paid by them as interest.

3. I do not impose any penalty under section 76 of the Finance Act, 1994, as per

above discussion & findings.

4. I impose a penalty of Rs. 1,000/- under the provision of Section 77 of the Act, for failure of failed to file the ST-3 return on due date.

5. I also impose a penalty of Rs. 9,74,412/- (Rs.13,22,959/- minus Rs.3,48,547/-) under Section 78 of the Finance Act, 1994.

2.1 The appellants were during the financial year 2004-05 providing taxable services namely-

i) Consulting Engineer Service under Section 65 (105)(g) of the Finance Act, 1994.

ii) Erection, Commissioning & Installation under Section 65(105)(zzd) of the Act.

iii) Maintenance & Repair under Section 65 (105)(zzg) of the Act.

2.2 As appellants defaulted on payment of service tax due on these services, Revenue has issued show cause notice dated 28.03.2007 demanding service tax under these category. By the said show cause notice, appellant were asked to show cause as to why:-

i) an amount of Rs.13,22,959/- (Rs. Thirteen lakhs twenty two thousand nine hundred and fifty nine only) being the service tax (incl. Education cess) (as per Annexure "B") payable under Section 68 of the Finance Act, 1994 on the amount of Rs. 1,29,70,186/- recovered by the assessee during the FY 2004-05 towards the business conducted with M/s Malabar Cements Ltd., should not be demanded and recovered from them;

ii) an amount of Rs. 2,12,691/- (Rs. Two lakhs twelve thousand six hundred and ninety one only) (as per Annexure "B" towards wrong availment / utilisation of cenvat credit should not be demanded and recovered from them in terms of Rule 14, read with Rule 16, of the Cenvat Credit Rules, 2004 and Section 73 of the Finance Act, 1994;

iii) the provisions of extended period under Section 73 of the Act ibid should not be invoked;

iv) interest at the appropriate rate for the period by which payment of tax delayed should not be demanded from them under Section 75 of the Act ibid;

v) a penalty should not be imposed under Section 76, 77, 78 for the acts and omissions as stated above.

vi) the amount of Rs. 4,89,955/- (ST of Rs. 3,68,547/- and interest of Rs. 1,21,408/-) deposited vide TR-6 dated 7.6.2007 as part payment made against the abovesaid service tax liability should not be appropriated and confirmed.

2.3 The show cause notice was adjudicated as per the order-in-original in para 1, against this order, the appellant preferred appeal before the Commissioner

(Appeals) which was dismissed as per the impugned order. Hence, this appeal.

3. We have heard Shri B. L. Yadav, ld. Counsel for the appellant and Shri M. S. Dhindsa, learned Authorised Representative for the Revenue.

3.1 Arguing for the appellant learned Counsel submitted that the issue in respect of levy of service tax on Work Contract Services has been decided by the Hon'ble Supreme Court in the case of CCE & Cus. vs. Larsen & Toubro Ltd. -2015 (39) STR 913 (SC) and he prayed for allowing of the appeal.

3.2 Learned Authorised Representative appearing for the Revenue reiterated the findings in the order of the lower authority.

4. We have considered the impugned order alongwith submissions during the course of arguments.

4.1 Undisputedly, the services provided by the appellant were contract services as the invoices are supply of material alongwith services.

4.2 We find that the issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of Larsen & Toubro Ltd., (supra) referred to by the learned Counsel for the appellant. The relevant para are reproduced below:-

"43. We need only state that in view of our finding that the said Finance Act lays down no charge or machinery to levy and assess service tax on indivisible composite works contracts, such argument must fail. This is also for the simple reason that there is no subterfuge in entering into composite works contracts containing elements both of transfer of property in goods as well as labour and services.

44. We have been informed by counsel for the revenue that several exemption notifications have been granted qua service tax "levied" by the 1994 Finance Act. We may only state that whichever judgments which are in appeal before us and have referred to and dealt with such notifications will have to be disregarded. Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise. With these observations, these appeals are disposed of.

45. We, therefore, allow all the appeals of the assessees before us and dismiss all the appeals of the revenue."

4.3 Following the decision of the Hon'ble Supreme Court, we allow the appeal in favour of the appellant. The appellant is entitled to consequential benefits, if any, in accordance with law.

(Pronounced on 27.08.2021).

