
(2023) 05 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 266 Of 2012

M/S Makkar Construction Co

APPELLANT

Vs

Commissioner Of C.E., Ludhiana

RESPONDENT

Date of Decision : 03-05-2023

Acts Referred:

Citation : (2023) 05 CESTAT CK 0006

Hon'ble Judges : S. S. Garg, Member (J); P. Anjani Kumar, Member (T)

Bench : Division Bench

Advocate : Surjeet Bhadu, Shivani

Final Decision : Allowed

Judgement

P. Anjani Kumar, Member (T)

1. Heard both the sides and perused the records of the case.
2. The appellants assail the order dated 23.11.2011 by the Commissioner of Central Excise, Ludhiana, passed in pursuance of this Tribunal's Order No. ST/104/2010 dated 15.12.2010.
3. Briefly stated the facts of the case are that the appellants are engaged in construction services and are registered for the same; the appellants have undertaken some construction for M/s Kangaroo Industries at Nalagarh, Solan, H.P. under a contract. The department was of the opinion that the contract did not specifically indicate the involvement of any material in the service provided by the appellants. During the period 01.10.2005 to 31.03.2006, the appellants have availed abatement as provided under Notification No. 15/2004-ST dated 10.09.2004 and 1/2006-ST dated 01.03.2006. The department was of the opinion that the said abatement was not applicable as the involvement of the material in the contract. A show cause notice dated 21.06.2007 was issued and the same culminated in the proceedings before us.
4. Learned Counsel for the appellants submits that as per the direction of the

Tribunal vide Final Order No. ST/104/2010 dated 15.12.2010, the appellants have produced evidence in the form of contract, VAT returns, Chartered Accountant Certificate, Chartered Engineer Certificate etc before the adjudicating authority; the evidence submitted clearly indicates that the payment made by the appellants towards the purchase of steel, cement etc; the address of the appellants as mentioned in the documents is also the same as that of M/s Kangaroo Industries, for which they have undertaken the contract. Further, Learned Counsel submits that during the relevant period, work contracts were not leviable to any service tax as held by the Apex Court in the case of Commissioner vs. Larsen & Toubro Ltd – 2015 (39) STR 913 (SC) which is affirmed by the Apex Court in the case of Total Environment Building Systems Pvt Ltd - 2022 (63) GSTL 257 (SC).

5. Learned Authorized Representative for the department reiterates the findings of the impugned order.

6. Having heard both the sides and having perused the records of the case, we find that the contract is clearly for the construction on the basis of rate fixed for per sq. ft.; the contract indicates quality of the material in some clauses; moreover, the copies of the VAT returns and the invoices clearly indicate the purchase of steel, cement and other material required for the construction; the fact that the invoices raised by the supplier of the appellants contain reference to the address of M/s Kangaroo Industries who have awarded the contract to the appellants; Certificates issued by the Chartered Accountant and Chartered Engineer, go on to establish the fact of use of material in the work executed by the appellants. Therefore, we are of the considered opinion that the contract was not simpliciter but was a composite contract. Therefore, we find that the appellants are entitled for the abatement of 67% of the value as claimed by them. As such, the impugned order cannot be sustained and needs to be set aside and we do so.

7. In view of the above, the appeal is allowed.