(2015) 10 CESTAT CK 0005

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 381 Of 2009

M/s Punj Lloyd Ltd. APPELLANT

Vs

C.S.T., Delhi RESPONDENT

Date of Decision : 08-10-2015

Acts Referred:
Finance Act, 1994 — Section 65(25b), 65(105)(zzq), 77, 78

Citation : (2015) 10 CESTAT CK 0005

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

Bench : Division Bench

Advocate : BL Narasimhan, Satyaveer Singh

Final Decision : Allowed

Judgement

1. Heard Id. counsel for the appellant and Id. Departmental Representative for Revenue.

2. Assessee has preferred the appeal against the adjudication order dated 26.02.2009 passed by C.C.E.(Adjn), New Delhi confirming service tax

demand of Rs.10,80,68,227/-; appropriated Rs.10,60,98,488/- and Rs.19,69,788/-, already remitted by the appellant towards the tax component;

Confirming demand of Rs.52,59,040/- towards the interest component; penalty equivalent to the tax liability determined, under Section 78 and penalty

as specified under Section 77 of the Finance Act, 1994.

3. On the admitted factual scenario, during September, 2005 to March, 2006, the appellant, under an agreement dated 11.08.2005 with the Oil and

Natural Gas Corporation Ltd. (ONGC) provided under a lump sum contract for a specified consideration design, engineering including surveys,

procurement, clearing and grading of various specified good for execution of works involving trenching, welding, joint coating, etc. All works pertained to Uran-Trombay Jawahardweep Oil Pipeline and 30"" Oil Pipeline from Tee off at Sheva South to JNPT terminal.

4. Proceedings were initiated against the appellant by a Show Cause Notice dated 19.12.2007 alleging rendition of the taxable 'Commercial or

Industrial Construction Service' (CICS) defined under Section 65(25b) read with Section 65(105)(zzq) of the Act proposing levy of tax, interest and

penalty as was eventually confirmed. The appellant contested the proceedings contending inter alia, that the works executed by it and the services

provided thereby were in the nature of indivisible works contract, which became taxable only with effect from 01.06.2007 and not prior thereto; that

CICS was a distinct taxable service and did not include indivisible works contract within its ambit and therefore there was no liability to tax on the

appellant herein.

5. Negating the contentions, the impugned order confirmed demand of service tax, interest and penalties as adverted to.

6. on a true and fair construction of the agreement between the parties, i.e., the appellant and ONGC dated 11.08.2005, the conclusion is irresistible

that since it is a lump sum contract though the specified milestones for payment indicate payments to be made by ONGC stage-wise during rendition

of the contract including separately for installation of equipment which go into the execution of the composite contract, the contract is involved is

clearly a works contract.

7. The issue whether works contract is taxable under the category of CICS prior to 01.06.2007 is no longer res integra. The issue stands concluded by

the judgement Supreme Court in CCE, Kerala Vs. M/s. Larsen & Toubro Ltd. & Anr [2015- SCC Online-SC-73 8w] hich categorically and

unambiguously declares the legal position that works contract is taxable only with effect from 01.06.2007 and not earlier thereto and that the definition

of CICS does not inhere either an appropriate charging provision or a computation provision for legitimising levy and collection of tax.

8. In the light of the law declared, the impugned order is unsustainable and is accordingly quashed. The appeal is allowed. No costs