(2024) 04 CESTAT CK 0003

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 40141, 40397, 40398 Of 2013

M/S. Real Value Promoters Pvt Ltd — APPELLANT

Vs

Commissioner Of GST & Central Excise — RESPONDENT

Date of Decision : 04-04-2024

Acts Referred:
Finance Tax Act, 1994 — Section 65(105)(zzzh), 75, 76, 77, 80

Citation : (2024) 04 CESTAT CK 0003

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

Bench : Division Bench

Advocate : G. Natarajan, M. Ambe

Final Decision : Allowed

Judgement

P. Dinesha, Member (J)

1. These appeals are filed by the tax payer against Order-in-Original 31/2012 dated 17.10.2012 and Order in Original No. 121 & 122/2012 dated 28.11.2012 passed by the Commissioner of Service Tax, Chennai.

2. The case of the Revenue is that during the internal audit of accounts of the assessee, they appeared to have noticed;

(a) Non-payment of Service tax on commercial rental income under immovable property service (RIPS) for the period from September 2008 to September 2009, and

(b) Non-payment of Service tax under Construction Service (CS) and Commercial Complex Service (CCS) for the period from April 2009 to September 2009.

3. Consequently, Show Cause Notices were issued proposing to demand service tax as above, apart from interest under Section 75 of the Finance Tax Act, 1994 and penalty under Ss. 76 and 77 ibid. It appears that the assessee filed a detailed reply to the above Show Cause Notices, there by denying liability to service tax, but however, chose to pay the service tax in so far as RIPS was

concerned. The Original Authority having considered the reply of the appellant, in adjudication, proceeded to pass the impugned Orders-in-Original, thereby confirming the proposed demand in the Show Cause Notices. Against these orders, the present appeals have been filed before this forum.

4. Heard Shri G. Natarajan, Learned Advocate for the appellant, he contends at the outset that since common issue is involved in all the appeals, all the appeals may be considered for common disposal; he would also submit that insofar as the disputed demand under RIPS is concerned, the appellant is only aggrieved by the penalty imposed. The scope of appeals with respect to CS/CCS is against the demand of service tax confirmed under residential complex service, for the period involved is April 2009 to September 2009. He would further contend that the decision of Hon'ble Apex Court in the case of Larsen and Toubro would squarely cover the issue and hence, the demand as confirmed in the impugned orders cannot survive.

4.1 To elaborate further, he would submit that in respect of construction activity undertaken by the appellant, the same was as per the composite contracts/works contracts entered into between the appellant and its customer, which involved both transfer of materials/goods required for construction as well as providing the construction services, which are indivisible in nature and, hence, the same was appropriately classifiable under Works Contract Service. Therefore, going by the decision of Apex Court in Larsen and Toubro (supra), the liability under Works Contract Service would be taxable only from 1.7.2010 and hence the present demands would not survive.

5. Per Contra, Shri M. Ambe, Deputy Commissioner, relied on the findings of the Original Authority.

6. We have considered rival contentions and we have also carefully perused the impugned orders and the documents placed on record and we find that the following issues arise for our consideration;

(1) whether the Revenue is justified in levying penalty under Sections 76 & 77 for RIPS? and

(2) whether the demand of service tax in respect of CS/CCS is correct for the period from April 2001 to September 2009?

7. The Principal Bench of CESTAT in the case of Krishna Homes Vs. Commissioner of Central Excise, Bhopal, reported in 2014 (34) STR 881 (Delhi) has held, following judgement in Larsen & Toubro and Others Vs. State of Karnataka, 2014 (34) STR 481 (S.C.) as under:

"9. In view of the above, though in view of the Apex Court judgment in the case of M/s. Larsen & Toubro Limited and Others v. State of Karnataka & Others (supra), the agreements entered into by a builder/promoter/developer with prospective buyers for construction of residential units in a residential complex against payments being made by the prospective buyers in instalments during construction and in terms of which the possession of the residential unit, is to be handed over to the customers on completion of the residential complex and full payment having been made, are to be treated as works contracts, it has to be held that during the period of dispute, there was no intention of the Government to tax the activity in terms of such contracts a builder/developer with prospective customers for construction of residential units in a residential complex. Such works contracts involving transfer of immovable property were brought within the purview of taxable service by adding explanation to Section 65(105)(zzzh) w.e.f. 1.7.2010, and therefore, it has to be held that such contracts were not covered by Section 65(105)(zzzh) during the period prior to 1.7.2010."

(emphasis supplied)

8. Further, to tax a particular service, the liability under that head shall only be prospective and not applicable for any period prior to that date, i.e. 01.07.2010 as in the case on hand. Hence, service tax could not be levied under works contract service prior to 01.07.2010; and the levy could only be under CRCS/CCS simplicitor as the case may be. Further, as held by the Hyderabad Bench of the Tribunal vide Final Order No. A/31010 to 31011/2019 dated 18.9.2019 in the case of Pragati Edifice Pvt. Ltd. Vs. Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam – I, after 1.6.2007, the chargeability to works contract arises only if it is a composite contract and under construction of complex service if it is a service simplicitor.

8.1 We note that the learned Advocate has relied on a number of orders of CESTAT Benches wherein similar views have been expressed, we set aside the impugned orders to the above extent and allow the appeals insofar as with grounds relating to CCS and CRCS are concerned.

8.2 Insofar as the penalty under RIPS is concerned, we find that the issue involved interpretation in as much as, the High Court of Delhi held that there was no liability to service tax insofar as the renting of immovable property was concerned and therefore, an amendment was brought in, to overcome the above judgement. Further, we find that even as on date the issue is pending before Hon'ble Apex Court. Hence, we find that it is a fit case where provisions of Section 80 of the Finance Act, 2012 could be exercised.

9. For the above reasons, we are of view that the penalties imposed on the appellant also cannot sustain and hence, we set aside the impugned orders, insofar as the penalty is concerned and allow the appeals to this extent also.

10. Resultantly, the impugned orders are set aside and the appeals are allowed with consequential benefits, if any, as per law.