(2024) 05 CESTAT CK 0041

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 42358 Of 2014

M/s. Touchstone Designs APPELLANT

Vs

Commissioner Of GST And Central Excise RESPONDENT

Date of Decision : 29-05-2024

Acts Referred:

Citation : (2024) 05 CESTAT CK 0041

Hon'ble Judges : Sulekha Beevi C.S., Member (J);Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : N. Viswanathan, M. Selvakumar

Final Decision : Allowed

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that the appellant is registered with the Service Tax Commissionerate under the category of Works Contract Services and are providing services relating to designing of interiors, false ceiling, carpentry, partition, flooring, etc. On verification of their accounts and the nature of the works undertaken, it was noted by the Department that the services were in the nature of 'completion or finishing services' which would come under the category of 'Commercial or Industrial Construction' or 'Construction of Complex Service'. The appellant had not paid service tax on the consideration received by them for the period from 16.06.2005 to 30.05.2007. The appellant was liable to pay service tax to the tune of Rs.1,06,055/- for this period.

1.2 Further, during the period from March 2008 to September 2008, the appellant had paid service tax under Works Contract Services at the rate of 2% of the taxable value whereas the rate of duty applicable w.e.f. 01.03.2008 on Works Contract Services was @4%. Thus there was short payment of service tax of Rs.32,199/-.

1.3 Show Cause Notice was issued proposing to demand the differential duty on the above allegations along with interest and for imposing penalties. After due process of law, the Original Authority confirmed the demand of service tax along with interest and imposed penalty. On appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2.1 The Ld. Counsel Shri N. Viswanathan appeared and argued for the appellant. On the first issue, it is submitted by the Ld. Counsel that the period involved is prior to 01.06.2007. Even as per quantification of the service tax as shown in the Show Cause Notice, it is very much clear that the appellant had executed works involving use of materials as well as rendition of services. In the case of composite contracts, the demand can be raised only under Works Contract Service as decided by the Hon'ble Apex Court in the case of Commissioner Vs. Larsen & Toubro Ltd. [2015 (39) STR 913 (SC)]. For this reason, the demand prior to 01.06.2007 cannot sustain and it is prayed that the same may be set aside.

2.2 In regard to the second issue, the Ld. Counsel submitted that the demand has been raised alleging that the rate of service tax has been increased from 2% to 4% on Works Contract Services w.e.f. 01.03.2008. It is submitted that the appellant had provided the services prior to this date and the invoices were also issued prior to 01.03.2008. The Department has demanded the differential service tax merely alleging that the consideration has been received after 01.03.2008. The rendition of services being prior to 01.03.2008 and the invoices also having been raised prior 01.03.2008, the rate of 2% service tax which is applicable prior to 01.03.2008 has to be applied. The decisions rendered by the Hon'ble High Court of Delhi in the case of Vistar Construction (P) Ltd. Vs. Union of India [2013 (31) STR 129 (Del.)]. and the decision of the Tribunal in the case of Commissioner of Service Tax, Delhi Vs. Bagai Construction [2016 (41) STR 433 (Tri.-Del.)] and the decision of the Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise & Customs Vs. Reliance Industries Ltd. [2010 (19) STR 807 (Guj.)] was relied. It is prayed that the demand may be set aside.

3. The Ld. Authorised Representative Shri M. Selvakumar appeared and argued for the Department. The findings in paragraphs 7 to 10 in the impugned order was reiterated. The Ld. Authorised Representative prayed that the appeal may be dismissed.

4. Heard both sides.

5.1 The first issue is with regard to the demand of service tax for the period prior to 01.06.2007 under the category of commercial or Industrial Construction Services. It is brought out from evidence that the appellant has rendered services in the nature of composite contracts involving both use of materials as well as rendition of services. The Hon'ble Apex Court in the case of Larsen & Toubro Ltd. (supra) has held that the composite works can be subjected to levy of service tax only under the category of Works Contract Services prior to 01.06.2007. Following the same, we are of the considered opinion that the demand under this head cannot sustain and requires to be set aside. Ordered accordingly.

5.2 The second issue is with regard to the demand of service tax alleging that the rate of service tax has been increased from 2% to 4% w.e.f. 01.03.2008. In paragraph 10 of the order passed by the Commissioner (Appeals), it is noted that the invoices were issued prior to 01.03.2008. It is sufficiently established that the services were rendered prior to 01.03.2008. For the relevant period, prior to 2011, the date on which the invoice is raised or the service is rendered is to be reckoned for application of the rate of service tax. For this reason, the rate applicable would be 2%. The appellant has already discharged service tax applying the rate of 2%. Therefore, the differential demand of service tax cannot sustain. The same is set aside.

6. In view thereof, the impugned order is set aside. The appeal is allowed with consequential reliefs, if any, as per law.