(2024) 04 CESTAT CK 0054

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No.42493 Of 2014

M/s.S.Thartius Engineering Contractors	APPELLANT
Vs	
Commissioner Of CGST & Central Excise	RESPONDENT

Date of Decision : 29-04-2024

Acts Referred:
Finance Act, 1994 — Section 65 (25b)

Citation : (2024) 04 CESTAT CK 0054

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

Bench : Division Bench

Advocate : K. Sankaranarayanan, R. Rajaraman

Final Decision : Allowed

Judgement

Sulekha Beevi.C.S., Member (J)

1. Brief facts are that the appellant provided construction services to various organizations like Indian Oil Corporation Ltd., Bharat Petroleum Ltd. Hindustan Petroleum Corporation Ltd. Such services were in the nature of construction services including renovation and finishing services. The Department was of the view that the appellant has to discharge service tax under 'Commercial or Industrial Construction Service' (CICS) as per Section 65 (25b) of Finance Act, 1994. Show cause notice was issued proposing to demand service tax for the period 17.10.2006 to 31.05.2007 under 'Commercial or Industrial Construction Service' along with interest and also for imposing penalties. After due process of law, the original authority confirmed the demand and interest and imposed penalties. On appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

2. Ld. Counsel Shri K. Sankaranarayanan appeared and argued for the appellant. It is submitted that the period involved is prior to 01.06.2007. It is submitted by the counsel that the composite contracts which involve both use of materials as

well as rendition of services cannot be subject to levy of service tax prior to 01.06.2007 as per the decision of the Hon'ble Apex Court in the case of Commissioner of C.Ex & Cus., Kerala Vs Larsen & Toubro Ltd. – 2015 (39) S.T.R. 913 (SC). The contracts which are composite in nature and indivisible cannot be vivisected to demand service tax under CICS. The Ld. Counsel prayed that the appeal may be allowed.

3. Ld. A.R Shri R. Rajaraman appeared and argued for the Department.

4. Heard both sides.

5. We note that the period involved in this appeal is prior to 01.06.2007. The Hon'ble Apex Court in the case of Larsen & Toubro Ltd. (supra) has held that composite contacts which involve both use of materials as well as rendition of services cannot be subject to levy of service tax prior to 01.06.2007. Following the decision (supra), we are of the view that the demand cannot sustain and require to be set aside.

6. In the result, the impugned order is set aside. The appeal is allowed with consequential reliefs, if any.