(2021) 11 CESTAT CK 0039

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 340 Of 2010

Shreeji Engineering Works APPELLANT

Vs

Commissioner Of Central Excise And ST, Vadodara RESPONDENT

Date of Decision : 11-11-2021

Acts Referred:

Citation : (2021) 11 CESTAT CK 0039

Hon'ble Judges : Ashok Jindal, J;Raju, Technical Member

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. This appeal is filed by the appellant against confirmation of demand of Service Tax of Rs.36,64,597/- under the category of Commissioning of Plant and Machinery Equipment service and a sum of Rs.26,12,953/- under the category of Maintenance and Repair service along with interest and various penalties imposed under Finance Act.

2. The facts of the case are that the appellant is a service provider and was registered under the category of Maintenance and Repair services. Intelligence was received that the appellant is engaged in providing service setting of pumping stations and maintenance of Tube well etc. at various places for Gujarat Water Supply & Sewage Board, Mahanagar Sevasadan, Vadodara etc. and having their annual turnover in excess of Rs. Two Crores. Further investigation and scrutiny of various work orders to service recipients, it was revealed that contracts at Serial Nos. 1, 2, 4, 5, 34, 37, 39, 40, 58, 73, 94 to 97 at Annexure 'D' are in the nature of Trunkey Contracts placed for Gujarat Water Supply & Sewage Board, Pioneer Polyfab Limited and Vadodara Mahanagar Sevasadan etc. which involves supply, installation, testing and commissioning of MCC Panels, VT Pump sets with electro-mechanical accessories at various places/ sites of sewage pumping station on turnkey basis as well as Operation and Maintenance of Sewage of pumping stations and water supply bore wells on turnkey basis. Therefore, show cause notice was issued to the appellant to demand service tax

under the category of Commissioning or Installation of Plant Machinery and Equipment Service and Repair and Maintenance Service. The show cause notice was adjudicated and demand as proposed in the show cause notice was confirmed along with interest and various penalties were also imposed. Aggrieved by the said order, the appellant is before us.

3. Learned Counsel for the appellant submits that the period involved in the matter is 2004-05 to 2008-09 and the service provided by the appellants is in the nature of works contract as they are turnkey contracts. Therefore appropriate classification of the services of the appellant are Works Contract service which came into effect from 01.06.2007. As there is no demand under the category of Works Contract service, therefore demand is not sustainable as held by the Hon'ble Apex Court in the case of Larson & Toubro vs. State of Karnataka - 2013/38/ Taxman.com 98/41-STT 113(SC). He also submitted that the said decision has been followed by this Tribunal in various decisions therefore the impugned order is to be set-aside.

4. On the other hand learned Authorised Representative supported the impugned order.

5. Heard the parties and considered the submissions. On careful consideration of the submissions made, we are of the view that during the course of adjudication, all the 97 work contracts have not been examined in detail by the Adjudicating Authority and merely on the basis of sample contracts, the demand of service tax was confirmed. It is also a fact on record that for the contracts mentioned at Serial No. 1, 2, 4, 5, 34, 37, 39, 40, 58, 73, 94 to 97 at Annexure 'D', there is categorical finding of the Adjudicating Authority that these are the turnkey projects. Thus, where there is turnkey projects, the services were rendered along with supply of materials i.e. in the nature of Works Contract service and for that the proper classification is Works Contract service but for the rest of the Contracts no examination in detail with nature of work was done by the adjudicating authority to say whether any supplies are inclusive of the work contract or not ?

6. Therefore, we set-aside the impugned order and remand back the matter to the Adjudicating Authority to examine each and every contract in detail to ascertain the fact whether services have been provided along with material and it is a composite contract. If this is so, proper classification should be Works Contract service and the Adjudicating Authority is to examine this fact and give a detailed finding on the above subject. The appellant is also directed to co-operate in the matter and provide documents for consideration by the Adjudicating Authority.

7. In view of this, the appeal is disposed of by way of remand.

(Operative part of the order pronounced in the open court)

