(2024) 11 CESTAT CK 0018

Customs, Excise And Service Tax Appellate, New Delhi

Case No: Service Tax Appeal No. 51994 of 2018

M/s Rajputana Construction Pvt. Ltd.		APPELLANT
	Vs	
The Commissioner of CGST & Central Excise Commissionerate, Jaipur		RESPONDENT

Date of Decision: Nov. 18, 2024

Acts Referred:

- Finance Act, 1994 - Section 65(105)(zzzza), 73, 77, 78
- Service Tax (Determination of Value) Rules, 2006 - Rule 2A

Hon'ble Judges: Dilip Gupta, President (J); P. V. Subba Rao, Member (T)

Bench: Division Bench

Advocate: Anand Narayan

Final Decision: Allowed

Judgement

P.V. Subba Rao, J

1. Rajputana construction Private Ltd., the appellant filed this appeal to assail the order-in-original, Impugned order dated 13.4.2018 passed by the

Commissioner in the remand proceedings.

2. The appellant is engaged in providing construction services in respect of commercial and industrial buildings and other civil structures and also in

restoration and repair of historical monuments and buildings. It is registered with the service tax department and has been filing service tax returns.

3. Based on an audit report, a show cause notice, SCN dated 28 April 2010 was issued to the appellant demanding service tax amounting to

₹7,08,79,201/- under the proviso to section 73(1) of the Finance Act 1994, the Finance Act. It was also proposed to demand interest and impose

penalties. The proposals in this SCN were decided by the Commissioner by order-in-original dated 11 September 2012, confirming a demand of

₹1,54,39,568/- and dropping the rest of the demand as he found that the appellant was entitled to various exemptions. He also demanded interest on

the service tax confirmed and imposed penalties on the appellant.

4. This order of the Commissioner was assailed by the appellant by filing Service Tax Appeal No. 3974 of 2012 before this Tribunal. By final order

dated 13 September 2017, the Tribunal remanded the matter to the Commissioner for de novo adjudication with the following directions:

â€œIt is the submission of the learned counsel that even though it is works contract, no benefit of abatement under notification number 15/2004-(ST)

dated 10.9.2004 was provided to the noticee. Similarly, the benefit of ratio laid down by the Honâ€™ble Supreme Court in the case of CCE, Kerala

versus Larsen and Toubro Ltd, 2015 (39) STR 913 (SC), was not provided to the noticee-appellant. In other words, he submits the valuation of the

material was not considered by the lower authorities. He also submits that the amount received by the notice appellant, is the subject matter of service

tax, but in the instant case, the amount was taken on the basis of the balance sheet and not on receipt basis.â€

5. The order impugned in this appeal was passed by the Commissioner in pursuance of the above directions of this Tribunal. He confirmed service tax

demand of only ₹97,67,765/- along with interest and imposed an equal amount as penalty under section 78 of the Finance Act.

6. None appeared on behalf of the appellant before us but a written submission dated 1st July 2024 was sent by the learned counsel for the appellant

with a request to decide the matter based on the submissions therein.

7. The following are the grounds on which the order is assailed by the appellant:

a) The order is beyond the SCN. The Commissioner dropped the demand up to 1st June 2007 on the ground that no service tax was leviable on works

contract services prior to this date as per Larsen & Toubro. However, he confirmed the demand for the period after 1st June 2007 under â€˜works

contract serviceâ€™ falling under section 65 (105)(zzzza) of the Finance Act. There was no proposal to demand service tax under â€˜works contract

serviceâ€™ in the SCN. Demand was proposed under â€˜commercial and industrial construction serviceâ€™. Therefore, the order travelled beyond

the notice and hence is not sustainable.

b) The Commissioner referred to Rule 2A of the Service Tax (Determination of Value) Rules, 2006 in paragraph 5.13.1 of the order and concluded in

paragraph 5.13.2 that as per the Rule only service portion of the contract is taxable and the said rule provides a mechanism to determine the same.

The rule stipulates the value of works contract service shall be equivalent to the gross amount charged for the contract less the value of transfer of

property in goods involved in execution of the said works contract. However, the Commissioner did not comply with this provision and did not exclude

the value of the property used on the ground that the appellant had failed to present facts and figures along with document evidence to claim the

benefit of the material. This is contrary to the Commissionerâ€™s own findings in paragraph 5.6.4 of the same order where he held that all contracts

were works contract services and that the appellant had, paid VAT on the material used. He should have deducted value of the goods used based on

the values given in the VAT returns.

c) The demand is completely time barred.

d) The Commissioner wrongly denied the benefit of cum tax value in determining the service tax payable.

e) Penalty is not imposable under sections 77 and 78 of the Finance Act in the case.

f) The impugned order may set aside with consequential relief to the appellant.

8. Learned authorised representative for the Revenue vehemently supported the impugned order and asserted that it calls for no interference.

9. We have considered the submissions and perused the records.

10. We find that of the various submissions made in the appeal, the first and the most important one is that the order travelled far beyond the show

cause notice. We first proceed to examine this because if this submission is accepted, it will not be necessary to examine the remaining submissions.

11. The undisputed facts are that the appellant had entered into contracts for providing services along with the materials, and therefore all their

contracts were in the nature of works contracts. This fact was also noted in the Tribunal's order in the first round of litigation. The impugned order

also does not dispute this fact. It is for this reason, that in the impugned order the Commissioner set aside the demand for the period prior to 1st June,

2007 following the judgement of the Supreme Court in Larsen & Toubro Ltd. However, the Commissioner confirmed the demand for the period after

1st June, 2007 under the head â€˜works contract serviceâ€™. There was no proposal to demand tax in the SCN under this head, nor has the appellant

been given an opportunity to defend itself against tax liability under this head. Therefore, as the impugned order clearly travelled beyond the SCN it

needs to be set aside on this ground alone. It is a well-settled legal position that any order which travels beyond the scope of the show cause notice

cannot be sustained.

12. In view of the above, it is not necessary for us to examine the remaining submissions made on behalf of the appearance.

13. The impugned order dated 13.04.2018 is set aside and the appeal is allowed with consequential relief(s) to the appellant.

(Order pronounced in open court on 18/11/2024.)