In the High Court of Judicature at Madras

Dated : 27.11.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Civil Miscellaneous Appeal Nos.2745 to 2749 of 2018
& CMP.Nos.20855, 20857, 20860 & 20863 of 2018

The Principal Commissioner of GST
& Central Excise, Chennai North
Commissionerate, Chennai-34 ...Appellant

Vs

M/s.Consolidated Construction
Consortium Ltd., Chennai-4 ...Respondent

APPEALS under Section 35G of the Central Excise Act, 1944 against the common order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai dated 09.11.2017 in Final Order Nos.42898 to 42902/2017.

For Appellant : Mr.T.Pramod Kumar Chopda

For Respondent: Mr.N.Viswanathan and Mr.S.Baskaran for N.Viswanathan

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM,J)

Mr.N.Viswanathan and Mr.S.Baskaran, learned counsel accept notice for the respondent. We have heard the learned counsel on either side and with consent, the above appeals are taken up for joint disposal.

2. These appeals are filed by the Revenue under Section 35G of the Central Excise Act, 1944 (hereinafter called the Act) challenging the common final order passed by the Customs, Excise and Service Tax Appellate Tribunal (hereinafter called the Tribunal) dated 09.11.2017.

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3. The Revenue has filed these appeals raising the following substantial questions of law :

> "i. Whether, in the facts and circumstances of the case, the Tribunal was right in concluding that the services rendered by the respondent were completed prior to 01.6.2007 in absence of any documentary evidence?
>
> ii. Whether, in the facts and circumstances of the case, the Tribunal was right in not providing any opportunity to verify the claim of completion of services by the respondent prior to 01.6.2007 when, admittedly, certain payments were received after 01.6.2007? and
>
> iii. Whether, in the facts and circumstances of the case, the Tribunal was right in allowing the appeals by following the decision rendered in the respondent's own case wherein the Tribunal remitted the matter for verification of the claim before the Lower Authority?"

4. The short issue, which falls for consideration, is as to whether the Tribunal was right in allowing the appeals filed by the assessee without verifying the claim of the assessee that they completed the services prior to 01.6.2007 and consequently, they are entitled for abatement.

5. We have perused the common order passed by the Tribunal and we find that the Tribunal took note of an earlier passed in the assessee's own case in Final Order No.40902/2016 dated 06.6.2016.

6. The learned Senior Standing Counsel appearing for the appellant has contended that the said final order passed by the Tribunal dated 06.6.2016 was an order remanding the matter with the specific direction to the Adjudicating Authority to examine the taxability of the services involved in the execution of the works contract and if such contracts were executed prior to 01.6.2007, the Adjudicating Authorities were directed to deal with such cases after taking note of the decision of the Hon'ble Supreme Court in the case of Commissioner of Central Excise & Customs, Kerala Vs. Larsen & Toubro Limited [reported (2015) 39 STR 913].

7. It is argued by the learned Senior Standing Counsel for the appellant that in the impugned common final order, the Tribunal straightaway granted relief and quashed the orders

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passed by the Adjudicating Authority without any verification being done with regard to the stand taken by the assessee that though the payments were received after 01.6.2007, the services were rendered prior to 01.6.2007.

8. We agree with the submission made by the learned Senior Standing Counsel for the appellant, since the Tribunal, in the said common impugned order, has not given any specific finding with regard to the relevant assessment year as to whether the services were rendered by the assessee prior to 01.6.2007 though they received the payment after the said date.

9. The learned counsel for the assessee point out that after remand, the Adjudicating Authority took up the matter, verified all the details and passed an order dated 27.1.2017 accepting the case of the assessee and dropping the proceedings initiated in the show cause notice dated 30.11.2010. It is further pointed out that in yet another assessment for the period from April 2011 to March 2012 and for the subsequent periods, show cause notices were issued and were adjudicated and Orders-in-Original dated 22.3.2018 were passed dropping the proposal in the relevant show cause notices by accepting the claim of the assessee with regard to abatement.

10. Though the learned counsel for the assessee is partially right in referring to the Orders-in-Original dated 27.1.2017 and 22.3.2018, still we cannot dispense with the verification process because the periods involved in these appeals are different from the periods involved in the other cases. Therefore, to that extent, we are of the opinion that the Adjudicating Authority should verify the nature of transactions to ascertain as to whether the decision of the Hon'ble Supreme Court in the case of Larsen & Toubro Limited can be applied to the case of the assessee.

11. Accordingly, the above civil miscellaneous appeals are allowed, the said common order dated 09.11.2017 passed by the Tribunal is set aside and the matters are remanded to the Adjudicating Authority to verify as to whether the assessee is entitled to the benefit of the decision of the Hon'ble Supreme Court in the case of Larsen & Toubro Limited and examine as to whether the assessee has completed the services prior to 01.6.2007 though payments were received by the assessee after the said date. Since the matters have been pending for a quite long period of time, we direct the Adjudicating Authority to complete the verification process as expeditiously as possible and preferably within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected CMPs are closed.

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12. The learned counsel for the respondent - assessee strongly rely upon the Order-in-Original dated 27.1.2017 and more particularly the observations contained in paragraph 4.19.

13. It will be open to the respondent - assessee to raise all the contentions before the Adjudicating Authority in the de novo proceedings.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

RS

To
The Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

+1cc to Mr.T.Pramodkumar, Advocate SR.No.81221

+2cc to Mr.N.Viswanathan, Advocate SR.No.81242

CMA.Nos.2745 to 2749 of 2018 &
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20863 of 2018

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