

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40954 of 2014

(Arising out of Order-in-Appeal No. 67/2014-ST dated 17.02.2014 passed by the Commissioner of Central Excise (Appeals), No.1, Foulks Compound, Anai Road, Salem – 636 001)

M/s. Devi Constructions

: Appellant

Old No. 69, New No. 119,
Power House Road,
Erode – 618 001

VERSUS

Commissioner of Central Excise and Service Tax

: Respondent

No.1, Foulks Compound, Anai Road,
Salem – 636 001

APPEARANCE:

Smt. Radhika Chandrasekhar, Advocate for the Appellant

Shri P.R.V. Ramanan, Special Counsel for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40814 / 2023

DATE OF HEARING: 11.09.2023

DATE OF DECISION: 15.09.2023

Order : [Per Hon'ble Mr. P. Dinesha]

Brief facts leading to the present dispute are that the appellant had entered into a contract with M/s. Indian Oil Corporation Ltd., for construction of Dykes, Internal Roads and other civil miscellaneous works at the marketing terminals at Trichy and Sankari as part of Chennai – Trichy – Madurai Pipeline Project and executed the work, for which they received an amount of Rs.94,41,467.91/- as

payment for execution of the said work during the period from July 2006 to March 2007.

2. It appeared to the Revenue that the above service would fall under "Commercial or Industrial Construction Service" as per Section 65(25b) of the Finance Act, 1994 and chargeable to Service Tax under Section 66 of the Finance Act, 1994 read with Section 65(105)(zzq) *ibid.* with effect from 10.09.2004 and that the gross value collected by the appellant for rendering such services in relation to M/s. Indian Oil Corporation Ltd. would attract Service Tax.

3. Further, upon scrutiny of the ST-3 returns filed by the appellant, the Revenue had apparently noticed that the appellant had not included the amount of Rs.94,41,467.91/- in the taxable value for the purpose discharging Service Tax, which prompted the issuance of Show Cause Notice dated 17.10.2007 proposing to demand Service Tax of Rs.3,81,360/- under the provisions of Section 73(1) of the Finance Act, 1994, along with applicable interest under Section 75 and penalty under Sections 76, 77 and 78 of the Act.

4. During adjudication proceedings, the Assistant Commissioner of Central Excise, Erode-I Division, vide Order-in-Original No. 02/2009 (ST) dated 10.02.2009, chose to confirm the demand of Service Tax along with interest, as proposed, along with penalty under Sections 77 and 78 *ibid.*

5. Thereafter, the appellant preferred an appeal before the first appellate authority, who having rejected the same vide impugned Order-in-Appeal No. 67/2014-ST dated 17.02.2014, the same has been assailed by the appellant before this forum.

6. Smt. Radhika Chandrasekhar, Ld. Advocate, would submit at the outset that the issue involved in the case on hand pertains to the period prior to 01.06.2007 i.e., prior

to the insertion of Section 65(105)(zzzza) in the Finance Act, 1994, and that the same has been settled by various judicial fora, including the order of this Bench of the CESTAT in the assessee's own case for a different period in *Devi Constructions v. Commissioner of Central Excise, Salem* [Final Order No. 41989 of 2017 dated 07.09.2017 in Service Tax Appeal No. 273 of 2009 – CESTAT, Chennai], which is as per the ratio laid down by the Hon'ble Apex Court in the case of *Commissioner of Central Excise and Customs, Kerala v. M/s. Larsen & Toubro Ltd.* [2015 (39) S.T.R. 913 (S.C.)].

7. *Per contra*, Shri P.R.V. Ramanan, Ld. Special Counsel for the Revenue, supported the findings of the lower authorities.

8. We have considered the rival contentions, perused the documents placed and record and have gone through the decisions / orders relied upon during the course of arguments.

9. We find that this very Bench in the assessee's own case in Final Order No. 41989 of 2017 dated 07.09.2017 (*supra*) had occasion to analyse an identical issue, wherein, this Bench having observed thus:

"The appellant is engaged in the execution of works contract and entered into a contract with M/s. Indian Oil Corporation Ltd. in respect of dykes, internal roads and other civil miscellaneous work in their marketing terminals at Trichy and Sankari. They had discharged service tax for the disputed period under commercial or industrial service with respect to the construction of dykes even though the activity fall under the category of works contract which became taxable with effect from 1.6.2007. Show cause notice was issued alleging that the appellant is liable to discharge service tax on the entire amount since the activity is classifiable under the category of construction services. Both the authorities below confirmed the demand along with interest and also imposed penalties. Hence this appeal."

has, after hearing both sides, concluded as under: -

"2. After hearing both sides we find that the period involved in the case is from September 2004 to June 2006. That the issue being a works contract whether subject to service tax prior to 1.6.2007 has been settled by the judgment of the Hon'ble Supreme Court in the case of Commissioner Vs. Larsen & Toubro Ltd. - 2015 (39) STR 390 [sic] [:913] (SC). We also note that the coordinate Bench in the case of CCL Products (India) Ltd. Vs. Commissioner of Central Excise, Guntur - 2017 (48) STR 50 (Tri. - Hyd.), in a similar matter had set aside the demand relying upon the judgment of the Hon'ble Supreme Court on identical set of facts."

The above view has been followed by various Tribunals across the country.

10. From the records before us, we do not find any change in the facts nor has the Revenue made out any case to suggest that the service rendered by the appellant was not under works contract and hence, we do not find any justifiable reasons to deviate from the view expressed by this Bench in the appellant's own case for a different period.

11. Consequently, we hold that there is no liability to pay tax under "Commercial or Industrial Construction Service" during the period under dispute which is prior to 01.06.2007, for which reason the impugned order deserves to be set aside, which we hereby do.

12. The appeal stands allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **15.09.2023**)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)