

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

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 40398 of 2015

(Arising out of common Orders-in-Original Nos. 53/2014 (C) (ST) & 54/2014 (C) (ST) dated 28.08.2014 passed by the Commissioner of Central Excise, Puducherry Commissionerate, Puducherry)

M/s. Mertho Constructions

No. 1, Republic Street, Reddiyar Palayam,
Puducherry – 605 010

: Appellant

VERSUS

Commissioner of Central Excise

1, Goubert Avenue, Beach Road,
Puducherry – 605 001

: Respondent

APPEARANCE:

Shri N. Viswanathan, 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. 40848 / 2023

DATE OF HEARING: 11.09.2023

DATE OF DECISION: 25.09.2023

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

This appeal is filed by the assessee against the common Orders-in-Original Nos. 53/2014 (C) (ST) & 54/2014 (C) (ST) dated 28.08.2014 passed by the Commissioner of Central Excise, Puducherry.

2.1 Brief facts, as could be gathered from the impugned order, are that the appellant is a proprietary concern engaged in providing construction services and having registration under the category of commercial construction service with effect from 26.10.2004. It appears that the

appellant even took registration under 'works contract service' with effect from 20.09.2007 upon the insertion of works contract service in the statute with effect from 01.06.2007.

2.2 It appears that there was a doubt in the mind of the Department as regards the advances received from the appellant's clients were concerned, which had resulted in exchange of letters, starting from a letter dated 01.11.2007, followed by summons dated 26.05.2009. In response to the above summons, it appears that the appellant responded by furnishing party-wise information (contract wise), bills raised month-wise value received from parties, etc., as sought for, for the period from 2004-05 to 2008-09 and also indicated that they had opted for the composition scheme under works contract service.

3.1 Not fully satisfied with the explanation of the appellant, Show Cause Notice No. 41/2009 (C) dated 14.10.2009 came to be issued proposing *inter alia* to demand tax under Section 67 of the Finance Act, 1994 alleging that the appellant had suppressed amounts of advance received, had suppressed the value of goods and materials supplied or provided or used by them, along with applicable interest under Section 75 and penalty under Section 78 and under Sections 76 and 77 of the Finance Act, 1994.

3.2 It appears that the appellant filed reply to the above Show Cause Notice by denying the allegations in the Show Cause Notice and it appears that even before the above Show Cause Notice could be adjudicated, another Show Cause Notice No. 22/2010 dated 13.04.2010 for the period from October 2008 to 31.03.2009 was issued on almost similar lines, also alleging suppression of facts, as levelled in the first Show Cause Notice.

4. The appellant appears to have filed a reply to the second Show Cause Notice as well, denying all the allegations levelled against it, but however, not satisfied

with the replies / explanations of the appellant, the adjudicating authority vide common Orders-in-Original dated 28.08.2014 confirmed the demands as proposed in the Show Cause Notices.

5. It is against this common Order-in-Original that the present appeal has been filed before this forum.

6.1 Heard Shri N. Viswanathan, Ld. Advocate for the appellant. He would contend at the outset that there is no dispute as regards the periods of dispute in question and also the fact that the appellant had rendered works contract service right from the beginning. He would also plead that there is also no dispute as regards the appellant paying Service Tax under works contract service under the composition scheme at the applicable rate after 01.06.2007; the action of the Revenue in demanding the differential Service Tax on the taxable value declared in the S.T.-3 return under CICS thereby denying the appellant the benefit of the composition scheme solely on the ground that all the ongoing projects entered into before June 2007, for which the composition scheme was not available with the introduction of works contract service effect from 01.06.2007, was not justified and hence, the full rate was charged on the gross value of income without any abatement.

6.2 He would also contend that on the very same facts and also alleging suppression, the second Notice came to be issued, raising similar demands.

6.3 He thus contended that the demands confirmed in the impugned Orders-in-Original lack merit in view of the law as settled 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.)]* insofar as works contract service is concerned.

7. *Per contra*, Shri P.R.V. Ramanan, Ld. Special Counsel, defended the finding of the lower authority.

8. We have heard the rival contentions and we have perused the documents placed on record, including the impugned order, and we find that the only issue to be decided is: whether the demand as confirmed in the impugned order is sustainable?

9.1 Admittedly, the appellant had undertaken construction of residential complex service on the strength of composite contracts entered into with its customers, which involved sale of goods i.e., construction materials, and also the service of construction. The Hon'ble Apex Court in the case of *Larsen & Toubro Ltd. (supra)* has in clear terms held that wherever works contract service is undertaken prior to 01.06.2007, involving contracts of composite nature, no demand under CICS or CRCS could survive, prior to 01.06.2007.

9.2 We find that the above ratio of the Hon'ble Apex Court has been followed by various CESTAT Benches and hence, the demand under CICS by vivisectioning the works contract service cannot sustain.

10.1 Insofar as the period covered under the second Show Cause Notice is concerned, we find from the pleadings of the appellant that they had declared the service under the category of 'works contract', had also availed the benefit of the composition scheme for payment of Service Tax at the applicable rate, which fact has been brought on record at paragraph 22 of the impugned order, but the only reason for the Revenue to deny the benefit of the composition scheme is that they had not filed any proof for having exercised the option for availing the benefit of the above scheme. For this very same reason, the Commissioner has brought to tax the entire amount of taxable value declared in the S.T.-3 return.

10.2 Service Tax, admittedly, is a tax on the service part and definitely not on the entire value declared / collected and hence, at the outset, we do not appreciate the demand of Service tax on the gross value declared in the S.T.-3

return, which is also done rejecting the appellant's claim under works contract service, but not specifying as to under which service is the amount being charged to Service Tax.

11. In view of the above, we do not see any justification to deny the benefit flowing from the decision in the case of *Larsen & Toubro Ltd. (supra)*.

12. Though the appellant has also taken a ground as regards the demands in both the above Show Cause Notices being hit by the period of limitation, since we are of the *prima facie* view that the demands cannot be sustained in view of our above discussion, we do not propose to discuss the issue of limitation here.

13. In view of the above, we set aside the impugned demands as well as the impugned order and allow the appeal with consequential benefits, if any, as per law.

(Order pronounced in the open court on **25.09.2023**)

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

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