

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

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 41745 of 2013

(Arising out of Order-in-Original No. 08/2013 dated 20.05.2013 passed by the Commissioner of Central Excise, Chennai-I Commissionerate, No. 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

M/s. Shanmuga Construction Services

: Appellant

No. 14, Devadi Street, Mylapore,
Chennai – 600 004

VERSUS

The Commissioner of Service Tax

: Respondent

Newry Towers, No. 2054-I, II Avenue, Anna Nagar,
Chennai – 600 040

APPEARANCE:

Shri N. Viswanathan, Learned Advocate for the Appellant

Smt. K. Komathi, Learned Additional Commissioner for the Respondent

CORAM:

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

HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40256 / 2023

DATE OF HEARING: 24.03.2023

DATE OF DECISION: 06.04.2023

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

This appeal is filed by the assessee against the Order-in-Original No. 08/2013 dated 20.05.2013 passed by the Commissioner of Central Excise, Chennai and the period of dispute is from October 2007 to April 2010.

2. The undisputed facts on record, as could be gathered from the impugned Order-in-Original, Show Cause Notice and the pleadings advanced during the course of hearing, are that the appellant, who is a developer, had entered into a joint development agreement for the construction of residential complexes consisting of 176 units / flats, for which it had engaged a contractor. The Revenue entertained a doubt that the

above construction services undertaken by the appellant were liable to Service Tax under 'works contract' service ('WCS' for short) and consequently, issued a Show Cause Notice dated 04.04.2011 proposing to demand the Service Tax, interest under Section 75 and penalties under Sections 76, 77 and 78 of the Finance Act, 1994, under WCS for the above period, and proposing to appropriate the payment made by them.

3. It appears that the appellant filed a detailed reply thereby rebutting the fastening of Service Tax liability on them, but however, not satisfied with the reply, the Commissioner, who took up for adjudication, vide impugned Order-in-Original, has confirmed the proposals made in the Show Cause Notice, and it is against this order that the present appeal has been filed before this forum.

4. Heard Shri N. Viswanathan, Learned Advocate for the appellant and Smt. K. Komathi, Learned Commissioner for the Revenue.

5.1 The Learned Advocate for the appellant would submit at the outset that the issue of taxability either under CCS or WCS has been laid to rest by a catena of orders of various Benches of the CESTAT, wherein the decision of the Hon'ble Apex Court in the case of *Commissioner of Central Excise & Customs, Kerala v. M/s. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)]* has been followed, to hold that Service Tax would be chargeable only after 01.07.2010 under the head CCS if service simpliciter is involved and under the head WCS if it is a composite works contract.

5.2 For convenience, the Learned Advocate for the appellant has referred to the findings of the co-ordinate Hyderabad Bench of the CESTAT in the case of *Commissioner of Customs, Central Excise and Service Tax, Visakhapatnam-I v. M/s. Pragati Edifice Pvt. Ltd. [2019 (31) G.S.T.L. 241 (Tri. - Hyderabad)]*, wherein it has been held as under: -

"(n) To sum up, as far as construction of 'residential complexes' by the builders are concerned :

(i) Prior to 1-6-2007, if it is a composite works contract, no Service Tax is leviable in view of the judgment of the Hon'ble Apex Court in the case of Larsen & Toubro (supra).

(ii) After 1-6-2007, it is chargeable as 'works contract' only if it is a composite contract and under 'construction of complex services' if it is a service simpliciter.

(iii) However, after 1-6-2007 but prior to 1-7-2010, whether it is a service simpliciter or a works contract, if the service is rendered prior to issue of completion certificate and transfer to the customer, it is not taxable being in the nature of self service.

(iv) Further, whenever the service is rendered for completion or construction of a flat for personal use of the service recipient, no Service Tax is payable in view of the exclusion in the definition of residential complex service.

(v) After 1-7-2010, Service Tax is chargeable under the head of 'construction of complex services' if it is service simpliciter and under 'works contract service' if it is a composite works contract.

(o) In view of the above, it is well settled legal position that **whether the service is rendered as service simpliciter or as a works contract, no Service Tax can be levied on construction of residential complex prior to 1-7-2010**. Learned Counsel would submit that for the period post 1-7-2010, they have been discharging Service Tax appropriately. This is a fact which can be verified to ascertain the full tax liability for the period post 1-7-2010 or otherwise."

(Emphasis supplied by us, in bold, for clarity)

6. *Per contra*, the Learned Additional Commissioner for the Revenue would rely on the findings of the lower authority.

7. Having heard the rival contentions, we find that the only issue to be decided is: whether the authority below is justified in demanding Service Tax from the appellant under works contract service for the period from October 2007 to April 2010?

8. We have gone through the orders of the various CESTAT Benches which have been considered by the Hyderabad Bench of the CESTAT in *M/s. Pragati Edifice Pvt. Ltd. (supra)*, the relevant observation of which has been extracted hereinabove. We find that it has been categorically held that no Service Tax could be levied on construction of residential complexes prior to 01.07.2010 even when the service is rendered either as service simpliciter or as a works contract. Admittedly, the period of dispute, as noted by us in the first paragraph, is from October 2007 to April 2010 and hence, the above ruling is squarely applicable to the present case.

9. In view of the above and also in view of the fact that no distinguishing / contrary order is placed on record, we are of the view that the demand raised in the impugned order cannot sustain, for which reason we set aside the impugned order.

10. In the result, the appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **06.04.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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