IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 562 of 2012

(Arising out of Order-in-Original Nos. 54, 55 & 56/2012 dated 28.03.2012 passed by the Commissioner of Service Tax, M.H.U. Complex, Nandanam, Chennai – 600 035)

M/s. Jain Housing & Construction Limited **: Appellant**
No. 11, Somasundaram Street, T. Nagar,
Chennai – 600 017

VERSUS

The Commissioner of Service Tax **: Respondent**
692, Anna Salai, M.H.U. Complex, Nandanam,
Chennai – 600 035

WITH

Service Tax Appeal No. 563 of 2012

(Arising out of Order-in-Original Nos. 54, 55 & 56/2012 dated 28.03.2012 passed by the Commissioner of Service Tax, M.H.U. Complex, Nandanam, Chennai – 600 035)

M/s. Jain Housing & Construction Limited **: Appellant**
No. 11, Somasundaram Street, T. Nagar,
Chennai – 600 017

VERSUS

The Commissioner of Service Tax **: Respondent**
692, Anna Salai, M.H.U. Complex, Nandanam,
Chennai – 600 035

AND

Service Tax Appeal No. 564 of 2012

(Arising out of Order-in-Original Nos. 54, 55 & 56/2012 dated 28.03.2012 passed by the Commissioner of Service Tax, M.H.U. Complex, Nandanam, Chennai – 600 035)

M/s. Jain Housing & Construction Limited **: Appellant**
No. 11, Somasundaram Street, T. Nagar,
Chennai – 600 017

VERSUS

The Commissioner of Service Tax **: Respondent**
692, Anna Salai, M.H.U. Complex, Nandanam,
Chennai – 600 035

APPEARANCE:

Smt. Radhika Chandrasekhar, Learned Advocate for the Appellant

Smt. Sridevi Taritla, Learned Additional Commissioner for the Respondent

CORAM:

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

FINAL ORDER NOs. 40077-40079 / 2023

DATE OF HEARING: 20.02.2023

DATE OF DECISION: 24.02.2023

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

These appeals are filed by the assessee against the common impugned Order-in-Original Nos. 54, 55 & 56/2012 dated 28.03.2012 passed by the Commissioner of Service Tax, Chennai, whereby the Commissioner-Adjudicating Authority has demanded the Service Tax under Section 73(1) read with Section 73(2) of the Finance Act, 1994 for the period from April 2006 to September 2009, along with applicable interest and penalty, as proposed in the Show Cause Notices.

2. Brief facts, which are relevant for our consideration and which are undisputed, are that the appellant is a developer engaged in the development of residential projects and during the course of its business, it enters into composite contracts with the buyers. The Revenue issued three Show Cause Notices, namely:-

Sl. No.	SCN No.	Date	Period
1.	SCN No. 398/2010	27.7.2010	01.04.2006 to 31.03.2009
2.	SCN No. 479/2010	08.09.2010	2007-08 to 2008-09
3.	SCN No. 77/2011	30.03.2011	October 2009 to June 2010

thereby proposing to levy Service Tax with respect to various projects executed by the appellant under Construction of Residential Complex Service and Works Contract Service, in response to which it appears that the appellant filed a detailed reply denying the tax liability as proposed in the Show Cause Notices.

3. The Commissioner, however, not satisfied with the reply, proceeded to confirm the demands, as proposed in the Show Cause Notices vide impugned common order, against which the present appeals have been filed before this forum.

4. Heard Smt. Radhika Chandrasekhar, Learned Advocate for the appellant and Smt. Sridevi Taritla, Learned Additional Commissioner for the Revenue. After hearing both sides, we find that the only issue to be decided is: whether the demands confirmed in the impugned common order is correct?

5.1 The Learned Advocate for the appellant would submit at the outset that the issue involved is no more *res integra* as the same stands settled by the decision of the Hon'ble Apex Court in the case of *Commissioner of C.Ex. & Cus., Kerala v. M/s. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)],* which has been followed by the Chennai Bench of the CESTAT in the case of *M/s. Real Value Promoters Pvt. Ltd. v. Commissioner of G.S.T. and Central Excise, Chennai & ors. [Final Order Nos. 42436-42438/2018 dated 18.09.2018 – CESTAT Chennai].* This very Bench, in the case of *M/s. Real Value Promoters Pvt. Ltd. (supra),* has considered the orders of various Benches of the CESTAT wherein the decision in the case of *M/s. Larsen & Toubro Ltd. (supra)* of the Hon'ble Apex Court was considered, and has concluded as under:-

> *"8. In the light of the discussions, findings and conclusions above and in particular, relying on the ratios of the case laws cited supra, we hold as under:-*

a. The services provided by the appellant in respect of the projects executed by them for the period prior to 1.6.2007 being in the nature of composite works contract cannot be brought within the fold of commercial or industrial construction service or construction of complex service in the light of the Hon'ble Supreme Court judgment in Larsen & Toubro (supra) upto 1.6.2007

b. For the period after 1.6.2007, service tax liability under category of "commercial or industrial construction service" under Section 65(105)(zzzh) ibid, "Construction of Complex Service" under Section 65(105)(zzzq) will continue to be attracted only if the activities are in the nature of services" simpliciter.

c. For activities of construction of new building or civil structure or new residential complex etc. involving indivisible composite contract, such services will require to be exigible to service tax liabilities under "Works Contract Service" as defined under section 65(105)(zzzza) ibid.

d. The show cause notices in all these cases prior to 1.6.2007 and subsequent to that date for the periods in dispute, proposing service tax liability on the impugned services involving composite works contract, under 'Commercial or Industrial Construction Service' or 'Construction of Complex' Service, cannot therefore sustain. In respect of any contract which is a composite contract, service tax cannot be demanded under CICS / CCS for the periods also after 1.6.2007 for the periods in dispute in these appeals. For this very reason, the proceedings in all these appeals cannot sustain."

5.2 We find that the above ruling of the Chennai Bench of the CESTAT covers the periods both prior to 01.06.2007 and post 01.06.2007 and we are satisfied that the ratio laid down therein applies to the case on hand. Therefore, we accept the submissions of the Learned Advocate for the appellant that the issue is settled in favour of the appellant.

6.1 The other issue involved is the levy of Service Tax on the miscellaneous income which was treated as receipts towards construction services. The Learned Advocate for the appellant would submit that the appellant had made certain payments towards purchase of land to M/s. Norne Homes Pvt. Ltd. and hence, the same was not a consideration received for providing any service. In this context, she would rely on the following orders of the Bangalore Bench and the Ahmedabad Bench of the CESTAT:-

(i) *M/s. Synergy Audio Visual Workshop P. Ltd. v. Commr. of S.T., Bangalore [2008 (10) S.T.R. 578 (Tri. – Bang.)];*

(ii) *M/s. Reynolds Petro Chem Ltd. v. Commissioner of C.Ex. & S.T., Surat-I [2023 (68) G.S.T.L. 292 (Tri. – Ahmd.)]*

to buttress her arguments that the Revenue cannot simply rely on TDS/26AS Statement under the Income Tax Act, 1961 to fasten Service Tax liability.

6.2 We find that in the case of *M/s. Reynolds Petro Chem Ltd. (supra),* the Learned Ahmedabad Bench has exhaustively dealt with the issue and has ruled as under:-

> *"5.7 We also find that in the present matter for confirmation of service tax demand revenue also relied upon the TDS /26ASStatement. The said statement under provisions of Income Tax Act, 1961 is an Annual Consolidated tax statement. Income tax and service tax are two different/ separate and independent special Act and their provisions operate in two different fields. Therefore by relying the 26AS /TDS Statement under the Service Tax Act, demand of service tax cannot be made. We also find the support from the decision of M/s Ved Security Vs. CCE, Rachi -III 2019(6) TMI 383 CESTAT, Kolkata wherein it was held that the value of taxable services cannot be arrived at merely on the basis of the TDS statements filed by the clients inasmuch as even if the payments are not made by the client, the expenditure are booked based on which the form 26AS is filed, which cannot be considered as value of taxable services for the purpose of demand of Service tax.*
>
> *5.8 In the matter of Synergy Audio Visual Workshop Pvt. Ltd. Vs. Commr. of S.T. Bangalore 2008 (10) S.T.R. 578 (Tri. - Bang.), the Tribunal observed as under :*

The other ground is for confirming demands is that the appellants had shown certain amounts due from the parties in their Income Tax returns and Revenue has proceeded to demand Service Tax on this amount shown in the Balance Sheet. The appellants have relied on large number of judgments which has settled the issue that amounts shown in the Income Tax returns or Balance Sheet are not liable for Service Tax. In view of these judgments, the appellant succeed on this ground also. The impugned order is set aside and the appeal is allowed.

In the matter of Commissioner of C.Ex. Jaipur-I Vs. Tahal Consulting Engineers Ltd. – 2016(44) S.T.R. 671 (Tri. Del) the Tribunal also observed as under:

2. The brief facts of the case are that respondents are engaged in providing taxable service. Certain proceedings were initiated against them for not paying the Service Tax mainly on the basis of income-tax return filed by them at Jaipur. It is the case of the Revenue that the respondent failed to discharge the Service Tax on full taxable value as reflected in the income-tax returns. Accordingly, the original authority, after due process, confirmed the Service Tax of Rs. 8,25,789/- under the category of "Consulting Engineer service". He also imposed penalties under various sections on the respondent. On appeal by the respondent, the learned Commissioner (Appeals) vide impugned order set aside the Order-in-Original and allowed the appeal. Aggrieved by this, Revenue is in appeal.

3. The main grounds of appeal is that respondent could not produce documentary evidence about Service Tax payment properly for the impugned period at Chandigarh and Lucknow. The ST-3 return filed at Chandigarh and Lucknow did not tally with income-tax return filed in Jaipur office.

4. We have heard the AR who reiterated the grounds of appeal. None represented the respondent.

5. We find that Commissioner (Appeals) examined the respondents appeal against confirmation of demand and allowed the same mainly on the ground that income-tax return cannot be the basis for demanding Service Tax. Further, the respondent's contention that they have rendered services outside the jurisdiction of Rajasthan and have discharged the Service Tax in Chandigarh and Lucknow, could have been verified with the concerned jurisdictional Chandigarh Commissionerate office. Departmental authority at Jaipur have no jurisdiction to proceed against the respondent for demanding Service Tax without any evidence of taxable service being provided within their jurisdiction. We find that there is nothing in the grounds of appeal which makes us to interfere with the finding of the learned Commissioner (Appeals). The appeal did not advert to any assertion as

to how the Service Tax demand can be made when there is no evidence to any taxable service having been rendered in the Jurisdiction of Rajasthan. No inquiries have been conducted by the Revenue to support their case. As such, we find that present appeal is without merit and accordingly, the same is dismissed.

In the matter of Calvin Wooding Consulting Ltd. Vs. Commissioner of C.Ex. Indore 2007 (7) S.T.R. 411 (Tri. - Del.) also Tribunal observed as under :
21. The liability of the recipient cannot arise merely from the fact that, the income-tax was deducted at source, which was the requirement of the Income-tax Act, on the recipient who made payment to the foreign supplier. Such a statutory requirement, as exists under the Income-tax law on the person making the payment to deduct tax at source, as a tax collecting agency of the Revenue, does not exist under the provisions of the ServiceTax law, and no obligation was cast upon the recipient of the service to make any deduction from the amounts payable by way of consideration, under the statutory provisions. Authorization to pay Servicetax under a contractual arrangement which obliged the recipient to pay the tax and file return, was a matter distinct and different from a statutory obligation to make tax deduction as a collecting agency, as envisaged under the Income-tax law. The Commissioner (Appeals) has, therefore, rightly set aside the orders-in-original insofar as respondent of Service Tax Appeals Nos. 170, 171 and 173 of 2005 was concerned.

As per the above settled legal position, we hold that the demand of service tax is not sustainable on the basis of TDS /26AS statements."

7. *Per contra*, the Learned Additional Commissioner for the Revenue relied on the findings given in the impugned order, but however, was unable to distinguish the above rulings relied upon by the Learned Advocate for the appellant.

8. After hearing both sides, we are of the clear view that the issue of Service Tax liability on the miscellaneous income is not justified as the same is answered by the above rulings of the CESTAT Benches. Following the ratio laid down in the above orders of the CESTAT, we set aside the impugned order.

9. In view of the above discussions, we set aside the demand as well as the impugned order and allow the appeals with consequential benefits, if any, as per law.

(Order pronounced in the open court on **24.02.2023**)

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

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

Sdd