

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

REGIONAL BENCH – COURT NO. III

SERVICE TAX APPEAL No.40969 of 2013

[Arising out of Order-in-Appeal No.CMB-CEX-000-APP-230-12 dated 19.10.2012 passed by Commissioner of Customs & Central Excise & Service Tax (Appeals), Coimbatore]

M/s. Sakthi Construction India (P) Ltd.

: Appellant

60, Narayana Guru Road,
Saibaba Colony,
Coimbatore 641 011.

VERSUS

The Commissioner of GST & Central Excise,

: Respondent

Coimbatore Commissionerate,
No.6/7, A.T.D. Street, Race Course,
Coimbatore 641 018.

APPEARANCE:

Mr. M.N. Bharathi, Advocate
Mr. Jaishankar, Advocate
For the Appellant

Mr. M. Ambe, Deputy Commissioner (A.R)
For the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

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

FINAL ORDER NO. 40114 / 2023

DATE OF HEARING: 02.03.2023

DATE OF PRONOUNCEMENT : 07.03.2023

Per: Ms. SULEKHA BEEVI C.S

Brief facts are that the appellant M/s.Sakthi Constructions India Pvt. Ltd. is rendering taxable service falling under the category of 'Construction of Residential Complex Service'. Upon investigation, it was

found that they had not discharged service tax on the entire consideration received by them for the period June 2005 to September 2006. Show cause notice was issued to the appellant proposing to demand the short paid service tax along with interest and also to impose penalties. After due process of law, the original authority confirmed the demand along with interest and imposed penalties. On appeal, the Commissioner (Appeals) though upheld the order passed by the adjudicating authority, granted cum tax benefit. Against such order, the appellant is now before the Tribunal.

2. Ld. Counsel Shri M.N. Bharathi and Shri Jaishankar appeared and argued for the appellant. It is pointed out that the period involved is prior to 01.06.2007 which is prior to the introduction of the definition of "Works Contract Services" in the Finance Act, 1944. The duty demand has been quantified after allowing abatement in accordance with Notification No.1/2006 dt. 1.3.2006. This itself would show that the contracts were composite in nature which included both supply of materials and services. On such score, the decision of the Hon'ble Apex Court in the case of *CCE & Cus. Kerala Vs Larsen & Toubro Ltd.* - 2015 (39) S.T.R 913 (SC) would apply. The decision of the Tribunal in the case of *Springfield Shelters P. Ltd. Vs CCE & ST* - 2018 (10) TMI 1280-CESTAT CHENNAI was relied to argue that the Tribunal has followed the decision of the Apex Court in *L&T Ltd.* (supra) to set aside the demand for the period prior to 01.06.2007.

3. Ld. A.R Shri M. Ambe appeared and argued for the Department.

4. Heard both sides.

5. The question is whether appellants are liable to pay service tax on the consideration received for construction services which are composite in nature including both supply of materials and provision of services for the period prior to 01.06.2007. The said issue stands answered by the Hon'ble Apex Court in the case of *Larsen & Toubro Ltd.* (supra). In the case of *Springfield Shelters P. Ltd.* (supra), the Tribunal observed as under :

“7.10 The issue was analyzed by the Hon'ble Apex Court in *Larsen & Toubro* case (supra) and held that there can be no levy of service tax on composite contracts (involving both service and supply of goods) prior to 1.6.2007. This read together with the budget speech as above would lead to the strong conclusion that composite contracts were brought within the ambit of levy of service tax only with effect from 1.6.2007 by introduction of Section 65(105)(zzzza) i.e. Works Contract Services. As pointed out by the Id. counsels for appellants, there is no change in the definition of CICS/CCS/RCS after 1.6.2007. Therefore only those contracts which were service simpliciter (not involving supply of goods) would be subject to levy of service tax under CICS / CCS / RCS prior to 1.6.2007 and after. Our view is supported by the fact that the method / scheme for discharging service tax on the service portion of composite contract was introduced only in 2007.”

6. Following the ratio of the above decisions, we are of the considered opinion that the demand cannot sustain and requires to be set aside which we hereby do. Impugned order is set aside. Appeal is allowed with consequential relief, if any, as per law.

(pronounced in open court 07.03.2023)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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

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