CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT AHMEDABAD

REGIONAL BENCH –COURT NO. 01

Service Tax Appeal No. 379 of 2009

[Arising out of OIO-STC/13/O&A/COMMR/AHD/2009dated 31/08/2009 passed by Commissioner of Service Tax-SERVICE TAX – AHMEDABAD]

M/s N J Devani Builders Pvt. Ltd **......Appellant**
Behind Ishwar Bhuvan, Navrangpura,
Ahmedabad- 380 009

VERSUS

C.S.T. & S.T.- Ahmedabad **.....Respondent**
Central Excise Bhavan, 7th Floor,
Nr. Polytechnic College, Ambawadi,
Ahmedabad-380 015

APPEARANCE:

Shri. P.M. Dave, (Adv.) for the Appellant
Ms. Nitina Nagori, Authorized Representative for Respondent

CORAM: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. C.J. MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO. A/ 12221 /2019

DATE OF HEARING/ DATE OF DECISION: 02.04.2019

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 31.08.2009 passed by the Commissioner (Appeals), Service Tax, Ahmedabad.

2. Brief facts of the case are that the appellant was engaged in the business of providing taxable services under the category of Commercial and Industrial Construction Service, Construction of Residential Complex Service and Transport of Goods by Road Service, as defined under Clauses (25b), (30a) and (50b) of the Finance Act, 1994. For providing such taxable services, the appellant got itself registered with the service tax department. During the disputed period from Oct.' 2006 to Sep.' 2007, the appellant had discharged the service tax liability in respect of taxable service i.e. Construction of Residential Complex, by availing the benefit of Notification No. 12/03-ST dated 20.06.2003, as amended by Notification No. 12/04-ST dated 10.09.2004. The benefit of exemption provided under the said notifications was denied by the department on the ground that the appellant had availed cenvat credit in respect of the goods sold during the disputed period. Accordingly, show cause proceedings were initiated

against the appellant, seeking for confirmation of the service tax demand along with interest and for imposition of penalty. The matter was adjudicated vide the impugned order dated 31.08.2009, in confirming the proposals made in the SCN.

3. Ld. Advocate appearing for the appellant submitted that the construction activity undertaken by the appellant during the relevant period was a composite one, comprising of provision of service and for supply of goods for carrying out such construction activity. Thus, it is contended that the services provided by the appellant should appropriately be classifiable as works contract service, leviable to service tax under such category of service w.e.f. 01.06.2007. He further submitted that since the adjudged demands were confirmed under taxable category of Construction of Residential Complex service, which is altogether a different service, the liability of tax cannot be fastened under such category of service. In this context, he has relied upon the judgment of Hon'ble Supreme Court in the case of CCE & Customs, Kerala Vs. Larsen & Toubro Ltd - 2015 (39) STR 913 (SC) and the decision of this Tribunal in the case of Vistar Construction Pvt. Ltd Vs. CST, New Delhi - 2016 (44) STR 675 (Tri.-Del.).

4. On the other hand, Ld. AR appearing for the Revenue reiterated the findings recorded in the impugned order and further submitted that since denial of the benefit of abatement provided under Notification No. 12/04-ST dated 10.09.2004 is the subject matter of present dispute, taxability of disputed service under entirely a new category of service cannot be claimed by the appellant at this juncture and as such, the ratio of judgments relied upon by the appellant will have no application for deciding the issue involved in the present case.

5. Heard both the sides and perused the records.

6. We find that the fact regarding supply of goods for execution of the construction activity was not in disputed in the case in hand inasmuch as such fact has also been acknowledged at paragraph 35 in the impugned order dated 31.08.2009. Thus, the construction activity undertaken by the appellant was a composite one, involving both supply/sale of goods and for execution of the assigned task of accomplishing the purpose of the contract. Since by nature, it was a composite contract, the appropriate head of classification of taxable service would be Works Contract Service, leviable to service tax w.e.f. 01.06.2007. The Hon'ble Supreme Court in the case of Larsen & Toubro Ltd (supra) have ruled that irrespective of the

classification of service, if any service involves both provision of service and for supply of goods, then the same should be considered as composite service and will be eligible to service tax under the taxable category of Works Contract Service and not otherwise. Further, by placing reliance on the said judgment of the Apex Court, this Tribunal in the case of Vistar Construction Pvt. Ltd (Supra) has allowed the appeal in favour of appellant under identical set of facts.

7. In view of the well settled position of law that the composite contract, involving both execution of the job and for supply of material for achieving such object, should appropriately be classifiable under Works Contract Service and not under any of the other defined category of service, we do not find any merits in the impugned order for endorsing the views expressed therein.

8. Therefore, we do not find any merits in the impugned order and accordingly, by setting aside the same, we allow the appeal in favour of the appellant.

(Operative portion of the order pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

(C.J. Mathew)
Member (Technical)

Seema