CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70231 of 2021

(Arising out of Order-in-Original No. 02-COMMISSIONER-GBNAGAR-2020-21, dated-03/06/2020 passed by Commissioner, Central Tax & Central Excise, Gautam Buddh Nagar)

Commissioner, Central Tax & Central Excise, Gautam Buddh Nagar **.....Appellant**
(Gautam Buddh Nagar, UP, 201306)

VERSUS

M/s Amandeep Builders, **....Respondent**
(I-525, Sector-Beta-II, Greater Noida,
Gautam Buddh Nagar, Uttar Pradesh 201301)

APPEARANCE:

Shri Santosh Kumar, Authorized Representative for the Appellant
Absent for the Respondent

CORAM: **HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.-70081/2025

DATE OF HEARING : 17.02.2025
DATE OF DECISION : 17.02.2025

P. ANJANI KUMAR:

M/s Amandeep Builders, Noida are providing services under the category of 'Construction of residential complex service'. On an investigation conducted by the officers of the Department it appeared to the Revenue that the Respondent did not discharg applicable service tax during the period from 16.06.2005 to 31.03.2008. A Show Cause Notice dated 07.06.2010 was issued seeking confirmation of the demand of Service Tax of Rs.86,22,724/-. The Show Cause Notice was adjudicated confirming the duty, interest and penalties. On an appeal filed by the Respondent this Bench vide Final Order No.72529 of 2018 have remanded the case back to the Original Authority with a direction to decide the issue in view of the

Hon'ble Apex Court's decision in the case of **Larsen & Toubro Ltd. [2015 (39) S.T.R. 913]**. Vide the impugned dated 03.06.2020 learned Commissioner had dropped the proceedings initiated. Revenue is in appeal against this impugned order.

2. Learned Authorized Representative reiterates the grounds of appeal and basically relies upon the Board Circular No.128/10/2010-ST dated 24.08.2010 and on the argument that the major portion of the consideration has been received by the Respondent after 01.06.2007 and therefore, there is no infirmity in confirming the demand under construction of industrial or residential complex services.

3. None for the Respondents. It has been noticed that neither the Respondent nor his representatives have been attending the proceedings. It appears that the Respondent is not interested in perusing the case. Therefore, in the interest of justice we are of the considered opinion that the issue be decided on merits in the interest of justice.

4. Heard learned Authorized Representative and perused the records of the case. It is not disputed that the contracts entered into by the Respondents are composite in nature wherein material and labour is involved. We find that learned Commissioner has relied upon the decision of the Hon'ble Apex Court in the case of Larsen & Toubro Ltd. (Supra). Learned Commissioner finds as under:-

> *6.7 In view of the declaration of law by the Hon'ble Supreme Court in the case of Larsen & Toubro, as elaborated above, the services of the party involved in the composite contracts do not gel covered under the definition of 'Construction of Complex', since it is evident that services have been provided alongwith supply of the goods and the services (alongwith the supply of the material/composite contracts) performed by the party is 'works contract service' which is taxable only from 01.06.2007. It is emphasized that such type of composite contracts, are to be covered under works contract service only, and not under 'Construction of Complex'. Therefore, the demand prior to 01.06.2007 made under the category of 'Construction of Complex' does not sustain.*
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> *6.7.1 On the same ratio, such composite contracts even for the period after 1.6.2007 disputed in the SCN dated 04.06.2010 will still have to be held as composite works contract only and not pure service simpliciter contracts that could be classified under construction of complex service. To*

> *put in another way, to merit being classified as construction of complex service, the service provider concerned will be rendering only service simpliciter without any other element in them namely without any material or goods supply involved. That is definitely not the case in the facts of the present case. The activities of the party will therefore continue to be in the nature of composite works contract services and hence even after 1.6.2007 cannot be brought within the fold of construction of complex service as proposed in the show cause notice dated 04.06.2010.*
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> *6.7.2 The show cause notice dated 04.06.2010 issued for the period prior to 1.6.2007 and subsequent to that date, proposing service tax liability on the impugned services involving composite works contract, under "Construction of Complex Service", cannot therefore sustain. In respect of any contract which is a composite contract, service tax cannot be demanded under 'Construction of Complex Service' for the periods also after 1.6.2007. For this very reason, the demand for the entire period 16.06.2005 to 31.03.2008 cannot sustain.*

5. We further find that the learned Commissioner has discussed the issue at length and has come to the conclusion that the services rendered by the Respondent are composite in nature and therefore, could not have been taxed under construction of residential complex service either before or after 01.06.2007. We find that a catena of judgements have been passed by various Courts and Tribunal on this issue. Therefore, we find that the issue is no longer *res integra*. As such, we do not find any reason to interfere with the impugned order. The Revenue's Appeal lacks merit.

6. In view of the above, appeal filed by the Revenue is dismissed.

(Operative part of the order is pronounced in open court)

Sd/-
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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