

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I**

APPEAL No.ST/593/2012-CU[DB]

(Arising out of Order-in-Appeal No. 155/ST/Apl/Alld/2011 dated 02/11/2011 passed by Commissioner of Central Excise (Appeals), Allahabad)

M/s Engineering Construction

Appellant

Vs.

Commissioner of Central Excise, Allahabad

Respondent

Appearance:

Shri Ravi Holani, Chartered Accountant,

for Appellant

Shri Sandeep Kumar Singh, Deputy Commissioner (AR),

for Respondent

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)

Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 25/07/2018

Date of Decision : 25/07/2018

FINAL ORDER NO-71642/2018

Per: Ashok Jindal

The appellant is in appeal against the demand of service tax which has been confirmed against them under the category of 'Commercial or Industrial Construction' services for the period from 10.09.2004 to 31.05.2007.

2. Heard the parties.

3. Considering the fact that the appellant had entered into a composite contract wherein they had supplied the goods along with the service and paying VAT as works contract on the goods supplied by them. In that circumstances, relying on

the decision of Hon'ble Apex Court in the case of Larsen & Toubro Ltd. reported at 2015 (39) STR 913 (SC) wherein it has been held that if the assessee providing service along with goods, then the service is covered under 'works contract'. Admittedly, the said service is taxable with effect from 01.06.2007 and for the prior period, if assessee is providing service along with material, the assessee is not liable to pay service tax under the category of 'Commercial or Industrial Construction' services. In that circumstances, for the impugned period, the appellant is not liable to pay service tax as the appellant is providing service along with material, therefore, the impugned order is set aside.

4. In result, the appeal is allowed with consequential relief, if any.

(Dictated in Court)

(Anil G. Shakkarwar)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

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