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

**APPEAL No. ST/1478/2011-CU[DB]**

(Arising out of Order-in-Appeal No. 74-ST/GZB/2011-12 dated 30/05/2011 passed by Commissioner of Central Excise, Customs & Service Tax (Appeals), Ghaziabad)

**M/s S.K. Sharma** **Appellant**

Vs.

**Commissioner Custom, C.E. & S.T., Ghaziabad** **Respondent**

Appearance:

Shri Rishi Raj Kapoor (Adv) for Appellant
Shri Mohd Altaf (Asstt. Commr.) AR for Respondent

**CORAM:**

**Hon'ble Smt. Archana Wadhwa, Member (Judicial)**
**Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)**

Date of Hearing : 20/07/2018
Date of Decision : 20/07/2018

FINAL ORDER NO. **71656 / 2018**

**Per: Anil G. Shakkarwar**

Brief facts of the case are that the appellant were issued with a show cause notice under the category of "Construction of Residential Complex Service" for the period from 16.06.2005 to 31.03.2008 demanding Service Tax of Rs.12,26,512/- on construction of residential complexes for U.P. Rajkiya Nirman Nigam Ltd. The appellant contended that w.e.f. 01.06.2007, they registered themselves under "Works Contract Service" and paid service tax on the said service under works contract service. The Original Authority confirmed the demand and learned Commissioner (Appeals) did not interfere with the same. Aggrieved by the said order appellant is before this Tribunal.

2. Heard the learned counsel for the appellant who has submitted that Hon'ble Supreme Court of India in the case of Commissioner of Customs and Central Excise, Kerala vs. Larsen & Toubro Ltd., reported at 2015 (39) STR 913 (SC) has held that such activities were covered w.e.f. 01.06.2007 under works contract service and for the earlier period the same activities which were covered by works contract service did not attract any service tax. He has submitted that their plea that w.e.f. 01.06.2007 they classified the said service under works contract service and paid service tax accordingly was not accepted by learned Commissioner (Appeals) and he confirmed the demand for the entire period from 16.06.2005 to 31.03.2008 under construction residential complex service. He has pleaded that relying on the ruling by Hon'ble Supreme Court in the said case of M/s Larsen & Toubro Ltd., since they have paid service tax under works contract service from 01.06.2007, the impugned order is not sustainable.

3. Learned AR for the Revenue has agreed that the issue is covered by the said ruling by Hon'ble Supreme Court.

4. Having considered the submissions from both sides we hold that the issue is covered by ruling by the Hon'ble Supreme Court in the said case of M/s Larsen & Toubro Ltd. and, therefore, the submissions by learned counsel for the appellant are sustainable. We, therefore, set aside the impugned order and allow the appeal.

(Dictated & pronounced in Court)

**Sd/-**
**(Archana Wadhwa)**
**Member (Judicial)**

**Sd/-**
**(Anil G. Shakkarwar)**
**Member (Technical)**

*Ankit*