CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

ST/75/2009-DB

[Arising out of Order-in-Original No. 48/2008 dated 31/10/2008 passed by Commissioner of Service Tax, Service Tax Commissionerate, Bangalore]

M/s. R.A.K CONSTRUCTION, DEVELOPERS & CONTRACTORS
NO.658, "SRI NIDHI", 5TH CROSS, 3RD BLOCK, KORAMANGALA,
BANGALORE-560034

Appellant(s)

Versus

C.C.E & C.S.T.-BANGALORE SERVICE TAX- I
1ST TO 5TH FLOOR,
TTMC BUILDING,above BMTC BUS STAND,DOMLUR
BANGALORE,
KARNATAKA
560071

Respondent(s)

Appearance:

B.G.CHIDANANDA URS
#520, AMRUTH NIVAS, 7TH MAIN, 13TH CROSS, RMV 11 STAGE, DOLLARS COLONY,
BANGALORE
KARNATAKA
560094

For the Appellant

Mr. Pakshirajan, AR — For the Respondent

Date of Hearing: 25/07/2018
Date of Decision:27/07/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21031/2018

Per : P.ANJANI KUMAR

M/s. RAK Construction, Developers & Contractors (the appellants) were providing services under the category of "Construction of Complex Service" as defined under Section 65 (30a) of the Finance Act, 1994. The Department has issued a SCN dated 01.05.2007 demanding Service Tax of Rs.57,65,640/- for the period from April 2005 to March 2006; the appellants have paid the entire amount. The Commissioner vide Order No. 48/2008 dated 31.10.2008 has confirmed the demand and appropriated the entire amount paid by them and imposed penalty under Section 76, 77, 78 of the Finance Act. Hence this appeal.

2. The counsel for the appellants contended that the demand of Service Tax on "works contract" for the period prior 01.06.2007 was held to be without the authority of law by the Hon'ble Supreme Court in the case of ***Commissioner Vs. Larsen & Toubro Ltd. 2015 (39) STR 913 (SC)*** wherein it was held that when the contract entered into is in the nature of "works contract" which is executed prior to 01.06.2007, there is no liability of Service Tax. They also place reliance of the decision of the Tribunal in the case of ***CCE Vs. R.K. Construction 2016 (41) STR 879 (T)***, ***Khurana Engineering Ltd Vs. CCE 2011 (21) STR 115(T)*** and ***Pioneer Fabrications Pvt. Ltd. Vs. CCE 2016(42) STR 563(T).***

3. The learned AR has reiterated the findings of OIO.

4. Heard both sides and perused the records of the case.

5. We find that the case of the appellants is squarely covered by the case law cited above. It is also covered by the clarification given by CBEC vide Circular No. 151/2/2012-ST dated 10.02.2012. We find that during the impugned period from April 2005 to March 2006 "works contract" or construction activity provided by the builder/promoter/developer were held to be not leviable to Service Tax. Following the ratio of the decisions in cases cited above, we find that the issue is squarely covered in favour of the appellants.

6. In view of the above, we allow the appeal with consequential relief, if any.

(Order was pronounced
in Open Court on **27/07/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

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