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

Appeal(s) Involved:

ST/436/2008-DB, ST/437/2008-DB, ST/438/2008-DB

[Arising out of Order-in-Appeal Nos. 153 to 155/2008 dated 29/03/2008 passed by the Commissioner of Central Excise, Bangalore]

Scion Properties 72, II Floor, Lakshminarayana Building, New Thippasandra, Bangalore - 75	**Appellant(s)**

Versus

Commissioner of Service Tax **Bangalore Service Tax- I** 1st To 5th Floor, TTMC BUILDING, Above BMTC Bus Stand, Domlur Bangalore - 560 071 Karnataka	**Respondent(s)**

Appearance:

Mr. Rajesh Kumar, CA Hiragange & Associates #1010, 1st floor (Above Corp. Bank) 26th Main, 4th T Block, Jayanagar, Bangalore – 560 041 Karnataka	For the Appellant
Mrs. Kavitha Poduval, Superintendent (AR)	For the Respondent

Date of Hearing: 12/02/2018
Date of Decision: 12/02/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order Nos. 20386 - 20388 / 2018

Per : V. PADMANABHAN

The present appeals are filed against the Order-in-Appeal Nos. 153-155/2008 dated 29.03.2008. The appellants were engaged in construction activities. The dispute pertains to the construction of various residential complex services. During the period prior to March 2006, the appellants paid service tax under the category of 'Construction of Complex Service' falling under Section 65 (105)(zzzh) of the Finance Act, 1994. Subsequently they claimed that there was no need for them to pay service tax on such activities and filed refund claims for the service tax which was already paid. Such refund claims came to be rejected by the original authority as well as in the impugned orders. Before the Commissioner (Appeals), the appellants are failed to produce copies of all relevant contracts for verification. Before the Commissioner (Appeals) the additional ground agitated was that the appellant was covered under the category of 'Works Contract Service" during the period under dispute but such Works Contract Service was introduced only in 2007 and hence service tax on construction works contract undertaken by them prior to this date was not payable. Having found rejection of their refund claim, the present appeals have been filed before the Tribunal.

2. With the above background we heard Mr Rajesh Kumar TR, learned CA appearing for the appellant as well as Mrs Kavita Poduval, DR appearing for the Revenue.

3. After hearing both sides and on perusal of record, we note that the refund claims stand rejected by both the authorities below for failure to produce copies of all the contracts for verification. It is further seen from the

record that the appellants have submitted copies of certificate issued by the CA which also does not appear to have been considered by the authorities below. We also note that the question of Works Contract Service was the subject matter in the case of ***Larsen & Toubro Ltd*****.** reported as ***2015-TIOL-187-SC-ST*** before the Hon'ble Supreme Court of India. The Apex Court decided in the **Larsen & Toubro Ltd**. case that Works Contract Services have been introduced in the statute only w.e.f. 01.06.2007 and contracts which are of the type of works contract cannot be leviable to service tax under any other category for the period prior to this date. From the record we see that the issue in the present case needs to be reexamined in respect of applicability of service tax in the light of the pronouncement of law by the Apex Court.

4. In the light of above observation, we set aside the impugned order and remand the matter to the original authority for a *denovo* decision in the matter after hearing the appellant and giving them an opportunity to produce all the relevant documents. The adjudicating authority will also consider the issue with reference to the observations of the Apex Court in the **Larsen & Toubro Ltd.** case supra and pass *denovo* orders. In the result, appeals are allowed by way of remand.

(Order was pronounced and dictated
in Open Court on **12/02/2018**)

(V. PADMANABHAN)
TECHNICAL MEMBER

(S.S GARG)
JUDICIAL MEMBER

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