CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 989 of 2009

(Arising out of Order-in-Original No. 24/2009-ST dated 13/08/2009 passed by CCE,C&ST, Cochin)

SILPPI CONSTRUCTIONS CONTRACTORS 40/7334, 2ND FLOOR, PENTA SQUARE, M.G.ROAD, KOCHI	Appellant(s)

VERSUS

Commissioner of Central Excise, Customs and Service Tax COCHIN-CCE NULL C R BUILDING, I S PRESS ROAD, ERNAKULAM, COCHIN, - 682018 KERALA	Respondent(s)

Appearance:

Shri K HARIHARAN, CA HARI & VASU, CHARTERED ACCOUNTANTS 231, KRISHNA, 32-A CROSS, 7TH BLOCK JAYANAGAR, BANGALORE - 560 082	For the Appellant
Shri Rama Holla, Superintendent(AR)	For the Respondent

CORAM:
HON'BLE MR. ANIL CHOUDHARY, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20285 / 2020

Date of Hearing: 19/02/2020
Date of Decision: 19/02/2020

Per : ANIL CHOUDHARY

Heard the parties. The period of dispute is 01.01.2006 to 31.03.2008.

2. There are two issues involved in this appeal - firstly whether admittedly in case of composite contract wherein construction has been made by the appellant for Government organizations and others, Aggregating Rs.2,07,63,462/-, the demand has been rightly raised under 'Commercial or Industrial Construction Service' (CICS) for the period prior to 01.06.2007.

3. The other demand for Rs.2,39,74,843/- under Construction of Complex Service, issue has been settled in favour of the appellant by the Hon'ble Supreme Court in the case of UOI Vs. Larsen & Toubro Ltd. [2015(39) STR 913 (SC)]. Accordingly this issue is settled in favour of the appellant as the Hon'ble Supreme Court has held that a composite contract is works contract service w.e.f. 01/06/2007. We also take note that there is no proposal by the Revenue to classify the said activity under Works Contract Service. Thus, prior to 01.06.2007, we hold the activity is not taxable.

4. As regards the second issue, the same is split into two parts.

i. The first part is construction for Indian Navy, being flats construction for their personnel (MAP). As such flats / apartments were not made for sale and construction is for one principal (the Ministry of Defence), the same is held to be not taxable in view of the law as clarified by the Board vide Instructions F.No.137/12/2006-CX.4 dt. 29/01/2009 (Circular No.108/2/2009-ST).

ii. Now, we are referring to the demand as regards construction to Seawood apartments, which the appellant has constructed for another builder/principal wherein the appellant have constructed the flats and handed over to principal, and have not sold any flat directly to the buyer/occupier. In this regard, cement and steel have been admittedly supplied by the principal to the appellant. Grievance of the appellant is - not allowing the abatement of 67% for material component, under Notification No. 15/2004-ST read with Notification No. 1/2006-ST. On considering the submissions and the relevant notification, we find that allowing 67% of the abatement is under the assumption that the contractor/assessee has supplied all the material involved in the civil construction. Thus we hold that the appellant is not entitled for the 67% abatement under the said notification. However, we hold that appellant is entitled to deduction of material component actually used by them in construction of the projects - Seawood Apartment. Appellant have also submitted that they are registered under the provisions of State VAT and they have maintained proper accounts of the material used in the project. Accordingly, we are remanding this issue to the file of the original adjudicating authority to allow abatement or deduction of actual quantity/amount of material used in the construction, as per the records of the appellant. Appellant is also directed to produce the calculation of such material used by them along with the Chartered Accountant certificate and shall also produce other relevant records like VAT assessment order, etc. as required for proper determination. Accordingly this appeal stands allowed in part and partly remanded as narrated above. We clarify that we have remanded only for the purpose of requantification of service tax in respect of Seawood Apartment only. All penalties are accordingly set aside.

(Order was pronounced and dictated in
Open Court on **19/02/2020**).

(ANIL CHOUDHARY)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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