

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**  
**CHANDIGARH**

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No. 560 Of 2011**

[Arising out of OIA No. 516/BK/RTK/GGN/2010 dated 27.12.2010 passed by the Commissioner (Appeals) of Central Excise-Gurgaon]

**Bajrang Lal Gupta**

**: Appellant (s)**

Kothi No. 167/19, Vivekanand Nagar  
Jind , Haryana

Vs

**CCE- Delhi-III**

**: Respondent (s)**

Udyog Vihar, Vanijya Nikunj, Phase-V Gurgaon

**With**

**(ii) Service Tax Appeal No. 798 Of 2011**

[Arising out of OIA No. 49/BK/RTK/GGN/2011 dated 27.01.2011 passed by the Commissioner (Appeals) of Central Excise, Gurgaon]

**(iii) Service Tax Appeal No. 1743 Of 2011**

[Arising out of OIA No. 332/BK/RTK/2011 dated 30.08.2011 passed by the Commissioner (Appeals) of Central Excise, Gurgaon]

**(ii) M. K. Jain Builders Pvt. Ltd.**

Gohana Road, Jind City, Haryana

**: Appellant (s)**

**(iii) M. L. Jain Construction Company**

Old Hospital Road, Jind, Haryana

Vs

**CCE- Delhi-III**

**: Respondent (s)**

Udyog Vihar, Vanijya Nikunj, Phase-V Gurgaon

**APPEARANCE:**

Shri Parikshti Aggarwal, Chartered Accountant for the Appellant

Shri Aneesh Deewan, Authorised Representative for the Respondent

**CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**ORDER No. A/60147-60149/2023**

Date of Hearing:01.06.2023

Date of Decision:05.06.2023

**Per : S. S. GARG**

These three appeals are directed against the impugned order dated 27.12.2010, 22.02.2011 and 30.08.2011 passed by the Ld. Commissioner (Appeals) of Central Excise, Gurgaon.

2. The issues in all three appeals are identical except the period involved. Hence, all the three appeals are taken up together for discussion and disposal.

3. The factual details of all the three appeals are given herein below:-

| Appeal No.   | Period involved                | OIA No.                                                   | OIO No.                                    | Services Provided                                                                                                     | Demand Confirmed |
|--------------|--------------------------------|-----------------------------------------------------------|--------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|------------------|
| ST/560/2011  | 16.06.2005<br>to<br>31.03.2007 | OIA No.<br>516/BK/RTK/<br>GGN/2010<br>dated<br>27.12.2010 | 37/ADC/RNR/ST<br>/2009 dated<br>29.10.2009 | Construction of Complex<br>Services- Section<br>65(105)(zzh) readwith<br>Section 65 (30a) of the<br>Finance Act, 1994 | 11,24,458/-      |
| ST/798/2011  | 16.06.2005<br>to<br>31.03.2008 | OIA No.<br>49/BK/RTK/<br>GGN/2011<br>dated<br>27.01.2011  | 35/ADC/RNR/ST<br>/2009 dated<br>29.10.2009 | ----do----                                                                                                            | 39,43,514/-      |
| ST/1743/2011 | 16.06.2005<br>to<br>19.10.2007 | OIA No.<br>332/BK/RTK/<br>2011 dated<br>30.08.2011        | 36/ADC/RNR/ST<br>/2009 dated<br>29.10.2009 | ----do----                                                                                                            | 6,56,523/-       |

4. For the sake of convenience, we take the facts of Appeal No. ST/560/2011 in the matter of Bajrang Lal Gupta vs. C.C.E.-Gurgaon.

5. Brief facts of the case are that the appellant is a proprietorship concern having its place of business at Vivekanand Nagar, Jind, Haryana and they are engaged in construction of residential houses on contract basis at various sites of Housing Board of Haryana. During the period in dispute from 16.06.2005 to 31.03.2007, the appellant has

received a sum of Rs. 3,24,72,988/- which *inter-alia* includes the value of material and labour.

6. An inquiry was conducted by the department and certain details were called from the appellant. Based on the information/documents received from the appellant, the department noticed that the appellant had not discharged service tax on the construction services rendered by it to Housing Board of Haryana. As per the department, the total consideration of Rs. 3,24,72,988/- received by the appellant for construction of residential houses is taxable under the taxable category of 'Construction of Complex Services' as defined under 65 (105) (zzh) read with Section 65 (30a) of the Finance Act, 1994.

7. On these allegations, the department had issued a show cause notice to the appellant dated 03.07.2008 proposing service tax demand of Rs. 11,24,458/- after extending the benefit of abatement of 67% under the Notification No. 1/2006-ST dated 01.03.2006.

8. The appellant filed a detailed reply to the show cause notice and the same was adjudicated by the Additional Commissioner vide Order-in-Original dated 29.10.2009 whereby the entire demand was confirmed against the appellant alongwith penalties under Section 76, 77 and 78 of the Finance Act, 1994.

9. Being aggrieved, the appellant filed an appeal before the Ld. Commissioner (Appeals) who rejected the said appeal and upheld the Order-in-Original vide its order dated 27.12.2010.

10. Hence, the present appeals.

11. Heard both the parties and perused the records.

12. Ld. Chartered Accountant appearing on behalf of the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and law.

He further submitted that the impugned order is contrary to the binding judicial precedents. He also submitted that it is an admitted fact that the contract between the appellant and the Housing Board of Haryana involves both supply of material and labour and is rightly classifiable under the category of 'Works Contract Services' rather than "Construction of Residential Complex Service". He further submits that the works contract service was not taxable prior to 01.06.2007 in view of the judgement of Hon'ble Apex Court in the case of CCE vs. Larsen & Toubro Limited as reported at 2015 (39) STR 913 (S.C.). He further submitted that the demand made after 01.06.2007 under the category of 'Construction of Complex Service' would also not sustain as the only possible classification is 'Works Contract Service'. He also submitted that once the impugned work do not confirm to the service category of Construction of Commercial Complex as proposed in the show cause notice, then the entire demand fails. He further submitted that this issue is no more *res-integra* and has been settled by various decisions of the Tribunals and the High Court and the Supreme Court wherein it has been consistently held that the composite contracts are classifiable under the taxable category of "Works Contract Service". He relied on the following judgements:-

- National Building Construction Corporation Ltd. vs. CCE, Shillong 2022 (66) GSTL 476 (Tri.-Kolkata)
- M/s. Rajendra Mittal Construction Company Private Limited vs. Commissioner, Central Excise and Service Tax, Alwar 2022 (3) TMI 1259-CESTAT New Delhi
- M/s Shree Mohangarh Construction Co. Vs. CCE, Jaipur and Vice-Versa cited as 2018 (4) TMI 619-CESTAT NEW DELHI

- Ashish Ramesh Dasarwar vs. Commr. Of Central Excise & Service Tax, Nagpur 2017 (9) TMI 1001-CESTAT Mumbai
- M/s Excel Engineering vs. Commissioner of Central Excise & ST-Meerut-II and Vice Versa 2017 (2) TMI 490-CESTAT Allahabad
- URC Construction (P) Ltd. vs. Commr. Of Central Excise, Salem 2017 (50) STR 147 (Tri.-Chennai)

13. He also submitted that since the works contract service came into existence from 01.06.2007, therefore the demand for the entire disputed period is liable to be dropped as indivisible contracts are specifically made taxable under the category of 'Works Contract Services'. He also submitted that it is a well settled legal position that services which are classifiable under the specific taxable category of services, the same cannot be made taxable under any other taxable category and for this submission, he relied upon the decision of the Tribunal, Chennai Bench in the case of Diebold Systems (P) Ltd. vs. CST, Chennai reported as 2008 (9) STR 546 (Tri.-Chennai).

14. He also submitted that the construction of the individual residential units is not taxable under 'Construction of Complex Services' as the single units remained outside the ambit of definition of residential complex. He has also submitted that the extended period of limitation has been wrongly invoked as the issue relates to interpretation and there was no malafide intention on the part of the appellant to evade payment of tax.

15. On the other hand, the Ld. DR reiterated the findings of the impugned order.

16. After considering the submissions of both the parties and perusal of material on record and the decisions relied upon by the appellant cited (supra), we find that the Hon'ble Apex court in the case of CCE

vs. Larsen & Toubro Limited cited (supra) has settled the issue relating to works contract service which includes supply of material and labour for consideration and the same is taxable only from 01.06.2007.

17. Further, we find that even for the period after 01.06.2007, various decisions of the Tribunal have consistently held that the composite contract or works contract service even after 01.06.2007 cannot be taxed under Construction of Complex Service under Section 65 (105) (zzh) read with Section 65 (30a) of the Finance Act, 1994.

18. We also find that in the case of CCE Belgaum vs. Mahakoshal Beverages Pvt. Ltd. 2014 (33) STR 616 (Kar.), the Hon'ble High Court of Karnataka, under identical circumstances, has held in Para 5 which are reproduced herein below:-

*"We have carefully considered the contentions urged by the learned counsel for the appellant. It is clear from the perusal of the show cause notice that as culled out above that what was proposed was to impose Service Tax amount of Rs. 90,96,501/- u/s 73(1)(a) of the Finance Act. In view of the explanation submitted in response to the show cause notice, the original authority held that the tax could not have been leviable under the said Act u/s 73(1)(a). However, the original authority proceeded to impose the tax under the head 'Business Auxiliary Service' which is taxable u/s 73(1)(d) and 73(1)(e). The fact that there was no proposal in the show cause notice to include the income as auxiliary business service is indisputable in view of the contents of the show cause notice and therefore in the absence of any notice issued to the respondent in view of the provisions of Section 73, it is clear that imposition of tax and consequently interest and penalty cannot be sustained and the same has been rightly set aside by the Tribunal. As no order to treat the income as Business Auxiliary Service had been passed without proposing the same to the respondent in the show cause notice, the order passed by the Tribunal is justified and substantial question of law has to be answered against the revenue".*

19. Further, we find that in the case of Prime Developers Limited vs. CCE [2018-TIOL-2867-CESTAT-MAD.], the Division Bench of Chennai Tribunal in identical circumstances has held as under:-

*"In the light of the discussions, findings and conclusions above and in particular, relying on the ratios of the case laws cited supra, we hold as under:-*

*a. The services provided by the appellant in respect of the projects executed by them for the period prior to 1.6.2007 being in the nature of composite works contract cannot be brought within the fold of commercial or industrial construction service or construction of complex service in the light of the Hon'ble Supreme Court judgment in Larsen & Toubro (supra) upto 1.6.2007*

*b. For the period after 1.6.2007, service tax liability under category of „commercial or industrial construction service“ under Section 65(105)(zzh) ibid, „Construction of*

*Complex Service" under Section 65(105)(zzzq) will continue to be attracted only if the activities are in the nature of services" simpliciter.*

*c. For activities of construction of new building or civil structure or new residential complex etc. involving indivisible composite contract, such services will require to be exigible to service tax liabilities under „Works Contract Service" as defined under section 65(105)(zzzza) ibid.*

*d. The show cause notices in all these cases prior to 1.6.2007 and subsequent to that date for the periods in dispute, proposing service tax liability on the impugned services involving composite works contract, under „Commercial or Industrial Construction Service" or „ Construction of Complex" Service, cannot therefore sustain. In respect of any contract which is a composite contract, service tax cannot be demanded under CICS / CCS for the periods also after 1.6.2007 for the periods in dispute in these appeals. For this very reason, the proceedings in all these appeals cannot sustain."*

20. Similarly, in the case of Srishti Construction vs. Commissioner of Central Excise & ST, Ludhiana vide order dated 30.11.2017, the Division Bench of this Tribunal has also set-aside the demand of service tax under 'Works Contract Service' and has also held that the extended period of limitation is not invocable and allowed the appeal of the appellant with consequential relief, if any, as per law.

21. By following the ratio of the above cited decisions, we are of the considered opinion that the impugned orders in the above noted cases are set-aside and the appeals are allowed with consequential relief, if any, as per law.

*(Pronounced on 05.06.2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

G.Y.