

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

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 673 of 2012

[Arising out of Order-in-Original No. 06/Ldh/12 dated 24.12.2012 passed by the Commissioner C.Ex. Ludhiana]

H P Singh Chadha
C-140, Kitchlu Nagar, Ludhiana

.....Appellant

VERSUS

Commissioner of CGST, Ludhiana
Centra Excise House, F Block, Rishi Nagar, Ludhiana,
Punjab 141001

.....Respondent

WITH

Service Tax Appeal No. 56028 of 2013

[Arising out of Order-in-Appeal No. 307/ST/Appeal/Ldh/2012 dated 13.12.2012 passed by the Commissioner (Appeals), Chandigarh]

D P Singh Chadha
C-140 and C-125 Kitchlu Nagar, Ludhiana

.....Appellant

VERSUS

Commissioner of CGST, Ludhiana
Centra Excise House, F Block, Rishi Nagar, Ludhiana,
Punjab 141001

.....Respondent

AND

Service Tax Appeal No. 56040 of 2013

[Arising out of Order-in-Appeal No. 302/ST/Appeal/Ldh/2012 dated 13.12.2012 passed by the Commissioner (Appeals), Chandigarh-I]

D P Singh Chadha
C-140 and C-125 Kitchlu Nagar, Ludhiana

.....Appellant

VERSUS

Commissioner of CGST, Ludhiana
Centra Excise House, F Block, Rishi Nagar, Ludhiana,
Punjab 141001

.....Respondent

APPEARANCE:

Present for the Appellant: Shri Naveen Bindal, Advocate
Present for the Respondent: Shri Pawan Kumar, Authorized Representative

CORAM: HON’BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON’BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60009-60011 /2024

DATE OF HEARING: 08.01.2024
DATE OF DECISION: 08.01.2024

PER S. S. GARG

These three appeals are directed against the impugned orders dated 24.02.2012 and 13.12.2012 whereby the Commissioner has confirmed the demand along with interest and penalties since the issue involved in all the three appeals is identical, therefore, all the three appeals are taken up together for discussion and disposal. The details of the three appeals are given here in below:

Appeal No.	Show cause date	Period	Demand of duty
1. ST/673/2012	24.02.2012	10.09.2004 to 31.03.2010	Rs. 56,89,867/-
2.ST/56028/2013	13.12.2012	2006-07 to	12,62,922/-

		2009-10	
ST/56040/2013	13.12.2012	2005-06 to 2009-10	14,92,722/-

For the sake of convenience, we will take up the facts of appeal no. ST/673/2012 wherein the Commissioner has confirmed the demand of service tax amounting to Rs. 56,89,867/- under proviso to Sub-section(1) of Section 73 of Finance Act against the appellant along with interest and equal penalty under Section 78. Ld. Commissioner has also imposed penalty of Rs. 5,000/- under Section 77 of the Act and also imposed penalty under Section 76 of the Act.

2. Briefly the facts of the present case are that the appellant are engaged in the construction of Residential/Commercial Complexes on contract basis in respect of government departments/Civic authorities and private agencies. The Construction services and construction of residential complex services were brought under the service tax net w.e.f. 10.09.2004 and 16.06.2005 respectively. It appears that the appellant contravened the provisions of Section 67,68,69 and 70 of the Finance Act, 1994 read with Rule 4,6 &7 of the Service Tax Rules, 1994 by not paying the service tax at the prescribed rate and by not furnishing the periodical ST-3 returns to the department as prescribed under law, in respect of the said services. On these allegations, a show cause notice dated 22.10.2010 proposing to demand of service tax of Rs. 56,89,867/- under proviso to Sub-

section(1) of Section 67(1) of the Finance Act was issued by invoking the extended period of limitation along with interest and penalty under Section 75, 76, 77 and 78 of the act.

3. The appellant filed reply to the show cause notice submitting that during the relevant period, the appellant has entered into three composite contract with Ludhiana Improvement Trust which included both material and labour for construction of the flats. It was further submitted by the appellant that the Works Contract was undertaken by them are not subject to service Tax under construction of residential/complex service as is made out by the Revenue in the show cause notice, further, the service tax liability of Rs. 56,89,867/- has been calculated after allowing abatement of 67% gross amount charged under Notification No. 18/2005-ST dated 07.06.2005 and Notification No. 01/2006-ST dated 01.03.2006 considering that contracts were composite Contracts including both labour and material. It was further the stand of the appellant that Ludhiana Improvement Trust has deducted Work Contract Tax (WCT) from gross amount for depositing with VAT authorities. After following the due process, the Ld. Commissioner confirmed the demand under the category of Construction of Complex service and construction of residential complex service.

4. Heard both the parties and perused the record.

5. Ld. Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without

properly appreciating the facts and the law and the binding judicial precedents. He further submitted that it is not disputed that the contract executed by the appellant was Works Contract which includes the material and the service element. He further submitted that the service tax on works contract was made applicable w.e.f. 01.06.2007 whereas the period involved in the present case is 10.09.2004 to 31.03.2010. He further submitted that even after 01.06.2007 service tax cannot be demanded under the category of construction of residential/commercial complex service in case of composite contract including the services as well as the material.

6. He further submitted that this issue is no more *res integra* and has been settled by various decisions of the Tribunal wherein the Tribunal after relying upon the decisions of the Hon'ble Apex Court in the case of Commissioner of **C.Ex & Cus. Kerala Vs. Larsen & Toubro Ltd. reported in 2015 (39) S.T.R. 913 (S.C.)**. He further submitted that even after 01.06.2007 service tax cannot be demanded under the category of residential/complex service and this issue has also been settled by the various decisions of this Tribunal. In support of his submissions, he relied upon the following decisions:

- *M/s Srishti Consturction Vs. Commissioenr of Central Excise and ST, Ludhiana reported in 2017 (12) TMI 172-CESTAT, Chandigarh.*

- *Real Value Promotors Pvt Ltd Vs. Commissioner of GST and Central Excise, Chennai reported in 2018-TIOL-2867-CESTAT-MAD.*

- *India Guniting Corporation Vs. Commissioner of Central Tax, New Delhi reported in 2021 (52) G.S.T.L. 174 (Tri.-Del.).*
- *Ashwini Apartments Vs. Commissioner of GST & C.Ex. Chennai South reported in 2019 (31) G.S.T.L. 476 (Tri.-Chennai).*
- *SMS Gardens Pvt. Ltd. Vs. Commissioner of GST& Central Excise, Salem reported in 2022 (61) G.S.T.L. 33 (Tri.-Chennai).*
- *Kishorekumar Gokaldas Developers & promoters Vs. Commissioner of GST & C.Ex. Chennai South reported in 2019 (29) G.S.T.L. 337 (Tri.-Chennai).*
- *Citilights Properties P. Ltd. Vs. Commr. Of GST& C.Ex. Chennai North reported in 2019 (29) G.S.T.L. 355 (Tri.-Chennai).*
- *Warner Hindustan Ltd. Vs. Collector of Central Excise, Hyderabad reported in 1999 (113) E.L.T. 24 (S.C.).*
- *Precision Rubber Industries (P) Ltd. Vs. Commissioner of C.Ex. Mumbai reported in 2016 (334) E.L.T. 577 (S.C.).*
- *Suresh Kumar Bansal Vs. Union of India reported in 2016 (43) S.T.R. 3 (Del.)*
- *Commissioner of C.Ex. & Cus., Kerala Vs. Larsen & Toubro Ltd. reported in 2015 (39) S.T.R. 913 (S.C.).*

7. On the other hand, Ld. AR reiterated the findings of the impugned order.

8. After considering the submissions of both the parties and perusal of the material on record and various decisions relied upon by the appellant cited (Supra), it is pertinent to consider the definition of construction of complex service and residential complex service which is reproduced here in below:

"7.2 Construction of Complex Service (CCS), defined under section 65(30a) Ibid during the period of dispute as under-

"construction of complex" means -

(a) construction of a new residential complex or a part thereof, or

(b) completion and finishing services in relation to residential complex such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal Joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services; or

(c) repair, alteration, renovation or restoration of, or similar services in relation to, residential complex;

7.3 'Residential Complex was defined in section 65(91a) ibid during the disputed period as under:-

"residential complex" means any complex comprising of -

(1) a building or buildings, having more than twelve residential units:

(ii) a common area; and

(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person. the purposes of this clause, Explanation. For the removal of doubts, it is hereby declared that for

(a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;

(b) "residential unit means a single house or a single apartment intended for use as a place of residence;"

7.4 The taxable service of works contract was introduced with effect from 1.6.2007 by insertion of section 65(105)(zzzza), The Explanation to the said provision also contained the definition of "works contract" Section 65(105)(zzzza) read as under:-

"To any person, by any other person in relation to the execution of a works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

Explanation. For the purposes of this sub-clause, "works contract means a contract wherein,

(1) transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods, and

(ii) such contract is for the purposes of carrying out,

(a) erection, commissioning or installation of plant, machinery, equipment or structures, whether prefabricated or otherwise, installation of electrical and electronic devices, plumbing, drain laying or other installations for transport of fluids, heating, ventilation or air-conditioning including related pipe work, duct work and sheet metal work, thermal insulation, sound Insulation, fire proofing or water proofing, lift and escalator, fire escape staircases or elevators; or

(b) construction of a new building or a civil structure or a part thereof, or of a pipeline or conduit, primarily for the purposes of commerce or industry; or

c) construction of a new residential complex or a part thereof; or (

(d) completion and finishing services, repair, alteration, renovation or restoration of, or similar services, in relation to (b) and (c); or

(e) turnkey projects including engineering, procurement and construction or commissioning

(EPC) projects"

9. Further, we find that the crux of the issue in the present case is whether the service tax can be demanded under the category of construction of residential/commercial complex service in a case of

composite contract which includes services as well as the material prior to 01.06.2007. This issue is no more res integra and has been settled by the Honble Apex Court in the case of Commissioner of C.Ex. & Cus., Kerala Vs. Larsen & Toubro Ltd. reported in 2015 (39) S.T.R. 913 (S.C.). Further, this very issue has been considered in the various decisions cited (Supra). For the sake of convenience we will refer here the decision of the Real Value Promoters Pvt Ltd cited (Supra) wherein coordinate Bench of the Tribunal has discussed all the provisions regarding construction of complex service residential/complex and Works Contract service which was introduced w.e.f. 01.06.2007 and has held as under :

"7.5 There was considerable litigation on the issue whether service tax can be levied on indivisible works contract prior to its introduction from 1.6.2007 which was finally settled by the Hon'ble Apex Court in the case of Commissioner of Central Excise Vs. Larsen & Toubro Ltd. reported in 2015 (39) STR 390 (SC) = 2015-TIOL-187-SC-ST. The Hon'ble Apex Court held that the taxable services of 'consulting engineer under section 65(105)(g) of the Finance Act; erection, 'commission and installation services' under section 65(105)(zzd) of the said Act; 'technical testing and analysis' under section 65(105)(zzh) ibid, 'construction services' under section 65(105)(zzq); construction of complex services under section 65(105)(zzzh) would refer only to service contracts simpliciter and not to composite works contracts; that these five taxable services only would qualify without any other element. The Hon'ble Supreme

Court also observed that with Introduction of works contract service as a separate taxable service, statutory mechanism to exclude the value of transfer of property of goods has been prescribed. The Apex Court held that since the Finance Act had not laid down any charge or machinery to levy and assess service tax on indivisible works contract prior to 1.6.2007, the levy on such composite works contract prior to that date has no constitutional validity.

7.6 The Larsen & Toubro (supra) judgment has been followed by this Tribunal in many numbers of cases to set aside the demand of service tax on services like commercial or industrial construction service. construction of complex service etc. involving composite contract of both material supply as well as service element prior to 1.6.2007.

7.7 In the present appeal also, there is no dispute that the construction activities are in the nature of composite works contract. The appellants being involved in the construction of the same projects prior to and after 1.6.2007, for example, even in the show cause notice dated 20.10.2009 (relating to Appeal No. ST/723/2010), taxable value has been calculated at 33% of gross amount received which is an implicit admission that that activity involved both material supply as well as value services. Another ground for demand is that the appellants have not exercised their option for payment of service tax under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. In any case, the show cause notices Implicitly agree that the work performed by the appellant is in the nature of composite works composite works contract only and not

pure service simpliciter contracts that could be classified under commercial or industrial construction service, or construction of complex service. To put in another way, to merit being classified as CICS or CCS, the service provider concerned will be rendering only service contract only. Based on the Hon'ble Apex Court judgment in Larsen & Toubro, such composite works contract then will not be liable to service tax levy prior to 1.6.2007. On the same ratio, such composite contracts even for the period after 1.6.2007 disputed in these appeals will still have to be held as simpliciter without any other element in them namely without any material or goods supply involved. That is definitely not the case in the facts of these appeals. The activities of the appellants will therefore continue to be in the nature of composite works contract services and hence even after 1.6.2007 for the periods disputed in these appeals they cannot be brought within the fold of commercial or industrial construction service or construction of complex service as proposed in the show cause notices and confirmed in the impugned orders.

7.8 On the contrary, being composite works contracts, they will necessarily fall within the ambit of works contract service as defined under Section 65(105) (zzzza) ibid. It is possibly with this intent in mind that the lawmaker have included in the definition of works contract, erection and commissioning service, Commercial or industrial construction service, construction of complex service and in addition turnkey project including EPC projects within the definition of works contract service.

7.9 At this juncture, it is worthwhile to reproduce excerpts from the Union Finance Minister's budget speech in 2007-

"State Governments levy a tax on the transfer of property in goods involved in the execution of a works contract. The value of services in a works contract should attract service tax. Hence, I propose to an optional composition scheme under which service tax will be levied at only 2 per cent of the total value of the words contract".

7.10 The issue was analyzed by the Hon'ble Apex Court in Larsen & Toubro case (supra) and held that there can be no levy of service tax on composite contracts (involving both service and supply of goods) prior to 1.6.2007. This read together with the budget speech as above would lead to the strong conclusion that composite contracts were brought within the ambit of levy of service tax only with effect from 1.6.2007 by introduction of Section 65(105)(zzzza) ie. Works Contract Services. As pointed out by the id. counsels for appellants, there is no change in the definition of CICS/CCS/RCS after 1.6.2007. Therefore only those contracts which were service simpliciter (not involving supply of goods) would be subject to levy of service tax under CICS/CCS/RCS prior to 1.6.2007 and after. Our view is supported by the fact that the method / scheme for discharging service tax on the service portion of composite contract was introduced only in 2007."

10. Further, we find that the co-ordinate bench of the Tribunal has also relied upon the following decisions which are stated here in below:

a. In the case of Commissioner, Service Tax, New Delhi Vs. Swadeshi Construction Company - 2018-TIOL-1096-CESTAT-DEL, the Tribunal in para 7 has held as under:-

"7. We note that in the present case, the SCN was issued on 27.05.2011. On that date, both the tax entries, namely, Commercial or Industrial Construction Service and Works Contract Service, were available in the Finance Act, 1994. The SCN did mention this in the first para itself. However, the proposal for tax demand was specifically made under Commercial or Industrial Construction Service under Section 65 (105) (zzq) of the Finance Act, 1994. In such situation, we note that it cannot be a case of simple mentioning of wrong provisions of law as submitted by the Revenue. Apparently, the tax liability of composite works contract is to be considered under works contract services only as per legal position settled by the Hon'ble Apex Court in M/s L&T Limited. Even in the appeal, the Revenue submitted that the respondent were engaged in construction services liable to tax under tax entry Section 65(105) (xxg). The grievance of the Revenue is with reference to commercial nature of the construction undertaken by the respondent and not on the correct classification of taxable activity."

b. In the case of Skyway Infra Projects Pvt. Ltd. Vs. Commissioner of Service Tax, Mumbai- 2018-TIOL-360-CESTAT-MUM, in respect of identical issue for the period from 2005 to 2012, the Tribunal in para 7 has held as under:-

"7. On careful consideration of the submissions made by both the sides, we find that the issue falls for consideration is whether the services rendered by the appellant in respect of 52 contracts entered with various Govt. authorities need to be taxed under MMRC/CICS/ECIS or otherwise. It is on record and undisputed that the adjudicating authority has specifically held that all the 52 contracts which has been executed by the appellants are with material. Learned Counsel was correct in brining to our notice that the said findings of the adjudicating authority that the appellant is eligible for abatement of 67% of the value of the goods is in itself the acceptance of the fact that the contracts were executed with material. It is also on record that the Revenue has not contested these findings of the adjudicating authority before the Tribunal. If that be so, even when the Revenue authorities are accepting the facts that the contracts executed by the appellant are nothing but works contracts, for the period in question, entire case of the Revenue in the show-cause notice stands demolished by the Apex Court in the case of Larsen & Toubro Ltd. (supra). In the said judgment, their Lordships have very categorically laid down the law that the works contract cannot be vivisected for the confirmation of demand under various other services. On this ground itself, the entire demand confirmed by the adjudicating authority is liable to be set aside and we do so."

c. In the case of URC Construction (P) Ltd. Vs. Commissioner of Central Excise, Salem-2017 (50) STR 147 2017-TIOL-1214-CESTAT-MAD, the Tribunal in paragraphis 9, 10 and 11 has held as under:-

"9. The Hon'ble Supreme Court in re Larsen & Toubro & Ors. has decided thus

'24. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines "taxable service" as "any service provided. All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is ceded to in the charging provision is the Caration of service pattracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross wake of the works contract the value of properly in goods transferred in the execution of a works contract.'

10. In view of this specific decision and the admitted claim of the appellant that they are not providers of commercial or industrial construction service' but of 'works contract service, no tax is liable on construction contracts executed prior to 1st June, 2007.

11. Insofar as demand for subsequent period till 30th September, 2008 is concerned, it is seen that neither of the two show cause notices adduce to leviability of tax for rendering 'works contract service'. On the contrary, the submission of the appellant that they had been providing 'works contract service had been rejected by the adjudicating authority. Therefore, even as

the services rendered by them are taxable for the period from 1st June, 2007 to 30th September, 2008 the narrow confines of the show cause notices do not permit confirmation of demand of tax on any service other than 'commercial or industrial construction service'. It is already established in the aforesaid judgment of the Hon'ble Supreme Court that the entry under Section 65(105)(zzd) is liable to be invoked only for construction simpliciter. Therefore, there is no scope for vivisection to isolate the service component of the contract."

d. In the case of Logos Construction Pvt. Ltd. Vs. Commissioner of Central Excise as reported in 2018 (6) TMI 1361 = 2018-TIOL-2716-CESTAT-MAD, the Tribunal has held as under:-

"5.1 The payment upto 01.06.2007 will get extinguished on account of the law that has been laid down by the Apex Court in the case of Larsen & Toubro Ltd., (supra), relied upon by the Ld. Counsel. So ordered.

5.2 The Ld. Counsel has been at pains to point out that on-going projects which were only in the nature of works contract prior to 01.04.2007 cannot be brought under different category of Construction Services and CICS subsequently. We find merit in his arguments. The SCN has proposed demand of service tax liability only under these two categories and not under Works Contract service. The demand confirmed in the impugned order under these categories namely under construction service for the period 10.09.2004 to 16.06.2005 under CICS for the period 16.06.2005 to 30.09.2008 cannot also sustain and are therefore set aside. So ordered.

5.3 For the period 01.04.2008 to 30.09.2008, the demand confirmed is Rs 26,88,611/-. We note that the appellant has not contested the liability under works contract for this period. The only argument brought forth by

the Ld. Counsel is that they have discharged an amount of around Rs. 82 lakhs under this category after the visit of the departmental officers and therefore an amount of Rs. 36,88,611/- demanded in the impugned order should be considered as having been discharged. We find merit in his argument and hence the demand of Rs. 26,88,611/- under works contract service for the period 01.04.2008 to 30.09.2008 is required to be considered as having been paid, albeit subsequent to the visit of the officers. However, the interest liability if any that arise on this amount if not paid already will have to be discharged by the appellants. So ordered."

11. Further, we find that the Tribunal in the said decisions after analyzing the various case laws has arrived at the following findings which are reproduced in para 8 & 9 :

8. 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)(zzzh) ibid, 'Construction of Complex Service' under Section 65(105)(zzza) 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 c 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.

9. The next issue that arises for consideration is with regard to the demand raised for the reason that appellants did not intimate the department about their intention to opt for payment of service tax under composition scheme under Works Contract Service. The Tribunal vide Final Order No. 50871/2018 dated 6.3.2018 in the case of Vaishno Associates Vs. Commissioner of Central Excise = 2018-TIOL-1486- CESTAT-DEL had occasion to consider this issue and held for sole reason of not filing the intimation opting to pay service under Works Contract Service, the demand cannot sustain. Similar view was taken in Bridge & Roof Co. Ltd. Vs. Commissioner of Central Excise, Jaipur vide Final Order No. 58254 & 58255/2017 dated 1.12.2017 - 2018-TIOL-309-CESTAT-DEL. Following these decisions, we answer the issue in favor of appellants.

*12. Similarly, this Tribunal in the case of **India Guniting Corporation Vs. Commr. Of Central Tax, New Delhi** reported in*

2021 (52) G.S.T.L. 174 (Tri.-Delhi), on an identical issue, the Tribunal has held in para 19 & 20 as under:

"19. Learned Counsel for the appellant has submitted that there was no necessity for the Commissioner to examine whether service tax is exempted under the Notifications because a demand made under a particular category of service cannot be confirmed under a different category of service.

20. That submission advanced by the Learned Counsel for the appellant has force and it is not possible to accept the contention of the Leamed Authorized Representative of the Department that a demand made under a particular category can be confirmed under a different category.

19. In this connection it would be pertinent to refer to the decision of the Mumbai Tribunal in Ashish Ramesh Dasarwar v. Commissioner of Central Excise & Service Tax Nagpur (2017-TIOL-3230-CESTAT-MUM) The Division Bench of the Tribunal held as follows:

"6. As regards the period after 1-6-2007, since the demand was raised under "commercial or industrial construction service whereas admittedly the service is correctly classifiabile under works contract service, the demand raised under wrong head of service cannot sustain.

7. As per above discussion, the demand raised under "commercial or industrial construction service" shall not sustain.

Hence, the same is set aside.

20 . In M/s Choudhary Stone Crushing Company v. Commissioner of Central Excise and Service Tax, Jaipur-II [2019 (3) TMI 38-CESTAT, New Delhi), the Tribunal observed as under:-

"8. For period commencing on 1-6-2007 the composite services would be liable for classification under Works Contract Service only But we note that Show Cause Notice has proposed the demand for service tax under the category of Commercial and Industrial Construction Service as well as Repair and Maintenance Service. Hence we are of the view that the confirmation of demand under the category of WCS will not be proper particularly in view of the decision of the Tribunal in case of Ashish Ramesh Dasanvar (supra) wherein Tribunal has taken the view that demand for Service Tax is to be set aside if the Show Cause Notice proposed a classification different from WCS for construction activity."

21. A Division Bench of the Tribunal in M/s Gurjar Construction as Commissioner of Central Excise, Jaipur II [2019 (5) TMI 717 CESTAT, New Delhi) also examined such a position and observed that a demand made under a particular category cannot be sustained under a different category.

13. By following the ratio of the aforesaid decisions which is squarely applicable to the facts and circumstances of the present case, we are of the considered opinion that the impugned orders are not sustainable in law and thereafter, we set aside the same by allowing all the three appeals of the appellant with consequential relief if any, as per law.

(Partly dictated and pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)