IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. ST/155/2012

(Arising out of Order-in-Original No.. 03/COMMR/ST/2011 dated Nil.12.2011 passed by the Commissioner of Central Excise, Tirunelveli)

R. Rajendran, Civil Engineering Contractor Appellant

Vs.

Commissioner of GST and Central Excise
Tirunelveli Respondent

Appearance

Ms. Radhika Chandrasekar, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (AR) for the Respondent

CORAM

Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **29.08.2018**

Final Order No. **42323 / 2018**

Per Bench

Brief facts are that the appellant is a building contractor and was engaged in construction of residential complex service. It was noticed that they executed works contract pertaining to construction of police quarters and according to the department, the appellant was liable to pay service tax on the consideration received. Show cause notice was issued proposing to demand the service tax under the category of Construction of Complex Service. After due process of law, the adjudicating authority confirmed the demand along with interest and imposed penalties. Hence this appeal.

2. The ld. counsel Ms. Radhika Chandrasekar submitted that the period of dispute is from 2005 – 06 to 2009 – 10. The appellant had constructed police quarters and was engaged for such construction by Tamilnadu Police Housing Corporation Limited (TNPHCL), Government of Tamil Nadu undertaking wherein 100% shares are held by Tamil Nadu Government. The purpose was for construction of police quarters. The activity is a composite contract and involves transfer of property of goods during the execution of contract and therefore for the period prior to 1.6.2007, levy cannot sustain as per the decision of the Hon'ble Supreme Court in the case of Commissioner of Central Excise, Kerala Vs. Larsen and Toubro Ltd. – 2015 (39) STR 913 (SC).

3. In respect of the period after 1.6.2007, she submits that there is no liability to pay service tax since the entire construction is for the Government of Tamil Nadu and therefore is no commercial purpose involved in the construction. TNPHCL engages the appellant for construction of such quarters and the ownership of the house constructed vests with the Government of Tamil Nadu. TNPHCL being an extended arm of the Government of Tamil Nadu is akin to PWD itself. The Government has constructed residential quarters for its own police personnel. The appellant has provided services to the

Government and the same is covered by the definition of 'personal use' under explanation to definition of residential complex. The said issue stands covered by the decision of the Tribunal vide Final Order No. 41143 to 41146/2018 dated 13.4.2018 in the case of M/s. SIMA Engineering Constructions and Ors. Vs. Commissioner of Central Excise, Trichy.

4. The ld. AR Shri A. Cletus supported the findings in the impugned order.

5. Heard both sides.

6. As narrated above, the appellant has provided construction activity for construction of police quarters which is owned by TNPHCL, which is a Government undertaking. The Tribunal in the case of M/s. SIMA Engineering Constructions (supra) has considered the very same and issue and held to be not taxable. Following the same, we are of the considered opinion that the demand cannot sustain. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

Rex