

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

S.No.	Appeal No.	Appellant	Respondent
1.	ST/255/2012	SMS Shelters (P) Ltd.	Commissioner of GST & ST Coimbatore
Arising out of Order-in-Appeal No.18/2012 dt. 30.01.2012 passed by the Commissioner of Customs, Central Excise 7 Service Tax (Appeals), Coimbatore			
2.	ST/256/2012	SMS Shelters (P) Ltd.	Commissioner of GST & ST Coimbatore
Arising out of Order-in-Appeal No.19/2012 dt. 30.01.2012 passed by the Commissioner of Customs, Central Excise 7 Service Tax (Appeals), Coimbatore			
3.	ST/257/2012	SMS Shelters (P) Ltd.	Commissioner of GST & ST Coimbatore
Arising out of Order-in-Appeal No.20/2012 dt. 30.01.2012 passed by the Commissioner of Customs, Central Excise 7 Service Tax (Appeals), Coimbatore			

Appearance :

Ms. D. Naveena, Advocate
For the Appellant

Ms. T.Usha Devi, DC (AR)
For the Respondent

CORAM :

Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of hearing / decision : 13.12.2018

FINAL ORDER No. 43091-43093 / 2018

Per Shri Madhu Mohan Damodhar

All these three appeals since involving identical disputes and relating to same appellant, they are taken up for common disposal.

2. In Appeal ST/255/2012, the construction activity undertaken by the appellant of apartment complex has been classified under the category of "Construction of Residential Complex Service" for the period April 2006 to March 2008 and service tax of Rs.14,94,362/- with interest along with imposition

of penalties have been demanded by adjudicating authority and upheld by the Commissioner (Appeals) in the impugned order.

3. In Appeal ST/256/2012, appellants carried out construction activity on sub-contract basis for L&T during the period April 2008 to September 2008. Proceedings have been initiated against the appellants proposing demand of service tax of Rs.15,44,978/- with interest as also imposition of penalties under various provisions of law under the category of “Construction of Residential Complex Service” which was confirmed by original authority and upheld by the commissioner (Appeals) in the impugned order.

4. In Appeal ST/257/2018, appellants were engaged in construction activity of residential complex on sub-contract basis for L&T during the period October 2008 to March 2009. Demand of service tax liability of Rs.3,88,940/- under the category of construction of residential complex was proposed by a show cause notice and confirmed by the original authority with interest thereon and also imposition of penalties under Section 76, 77 of the Finance Act, 1994. The said order was upheld by the Commissioner (Appeals) vide the impugned order.

5. Today when the matter came up for hearing, on behalf of the appellants, Ld. Advocate Ms. D. Naveena submits that the issue involved in all these appeals is no longer *res integra*. She submits that the combined ratio of the Hon’ble Apex Court in the case of *Larsen & Toubro Ltd. – 2015 (39) STR 913 (SC)* and that of this Bench of the Tribunal’s decision in *Real Value Promoters Pvt. Ltd. - 2018 (9) TMI 1149 – CESTAT Chennai* is that service liability in respect of composite contracts involving both provision of service and supply of materials would be exigible to service tax only under “Works Contracts Service”. She submits that

this Bench of the Tribunal in *Real Value Promoters* (supra) in para-8 of the order has summarized and dealt with the issues as under :

"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)(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."

Ld. Advocate submits that the above ratio would be applicable to all these appeals on hand.

6. On the other hand, Id. A.R Ms. T. Usha Devi reiterates the impugned orders.

7. After hearing both sides, we find that Ld. Advocate is correct in her assertion and reliance on the case laws of *L&T* (supra) and *Real Value Promoters* (supra). The said case laws will indeed apply in full force in the facts of the appeals at hand. This being so, the impugned demands made in all these appeals for composite contracts under construction of residential complex instead of works contract cannot sustain and will have to be set aside, which we hereby do. Appeals are therefore allowed with consequential benefits, if any as per law.

(dictated and pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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