

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Division Bench B1]**

Appeal No.: ST/42299/2015

[Arising out of Order-in-Appeal No. 247/2015 (STA-II)
dated 27.08.2015 passed by the Commissioner of Service
Tax (Appeals-II), Chennai]

M/s. Rainbow Foundations Ltd., : **Appellant**
No. 4, Thanikachalam Road,
T. Nagar, Chennai – 600 017

Versus

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Chennai Outer Commissionerate

Appearance:-

Shri. S. Ramachandran, Consultant
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: 06.12.2018

Date of Pronouncement: **14.12.2018**

Final Order No. **43111 / 2018**

Per P. Dinesha :

The appellant is engaged in the business of Construction of Commercial Complex and Residential Complex which became taxable with effect from 10.09.2004 and 16.06.2005 respectively.

2.1 Based on intelligence that the appellant had been rendering the above services without obtaining Service Tax Registration and without payment of service tax, the Officers of the SIV Cell of the Service Tax Commissionerate visited the premises of the appellant on 20.10.2008 for verification of the appellant's records subsequent to which, a Show Cause Notice dated 19.04.2010 was issued to the appellant. In the above Show Cause Notice :

- (i) A demand of Rs. 3,29,444/- was sought to be demanded as service tax on the Construction of Commercial or Industrial Complex Service ('CICS' for short) for the period from November 2004 to May 2007 along with applicable cesses, interest and penalties; and
- (ii) A demand of Rs. 4,40,511/- was sought to be demanded as service tax on the Construction of Residential Complex Service ('CRS' for short) for the period from February 2007 to September 2007 along with applicable cesses, interest and penalties.

2.2 The same were confirmed in the Order-in-Original dated 25.01.2012 and thereafter upheld by the Commissioner of Service Tax (Appeals-II) vide impugned Order-in-Appeal No. 247/2015

(STA-II) dated 27.08.2015. Aggrieved, the assessee has filed this appeal before this forum.

3. Today when the matter came up for hearing, Ld. Consultant Shri. S. Ramachandran appeared on behalf of the appellant while Ld. DC (AR) Ms. T. Usha Devi appeared on behalf of the Revenue.

4.1 During the course of hearing, Ld. Consultant *inter alia* submitted that during the period under dispute, the appellant had undertaken two projects, namely :

- (i) “ Rainbow Arcade” - Construction of Commercial Complex;
and
- (ii) “Rainbow Balaji Garden” at Kodaikanal – Construction of Residential Complex;

That both the projects were completed and sold much before the services became taxable; that service tax on CICS was demanded for the period prior to 01.06.2007 whereas service tax on CRS demanded for the most period prior to 01.06.2007, but no demand was made under Works Contract Service (WCS).

4.2 Ld. Advocate also placed reliance on the following case-law :

- *M/s. Real Value Promoters Pvt. Ltd. Vs. Commr. of G.S.T. & C.Ex., Chennai – 2018-TIOL-2867-CESTAT-MAD;*
- *M/s. Aswini Apartments Vs. Commr. of G.S.T. & C.Ex., Chennai South – 2018-TIOL-3350-CESTAT-MAD;*

- *M/s. Sreevatsa Real Estates Pvt. Ltd. Vs. Commr. of C.Ex., Cus. & S.T., Coimbatore – 2018-TIOL-3402-CESTAT-MAD;*
- *M/s. Krishna Homes Vs. Commr. of C.Ex.,Bhopal – 2014 (34) S.T.R. 881 (Tri. – Del.);*

5. *Per contra*, Ld. AR supported the findings of the lower authorities. She relied on the case of *BCC Developers and Promoters Pvt. Ltd. Vs. Commissioner of C. Ex., Jaipur – 2017 (52) S.T.R. 22 (Tri. – Del.)* in support of his contentions.

6. We have heard the rival contentions, perused the materials placed on record and have also gone through the judgements/Orders referred to during the course of arguments.

7. We find that the Commissioner in the Order-in-Original has confirmed the demand under Construction of Commercial or Industrial Complex Service for the period from November 2004 to May 2007 and also the demand under Construction of Residential Complex Service for the period from February 2007 to September 2007. The liability of service tax in respect of the impugned services came to be tested in the case of *M/s. Real Value Promoters Pvt. Ltd. (supra)* wherein this Bench relying on the decision of the Hon'ble Supreme Court in the case of *C.C.E. Vs. Larsen & Toubro Ltd. – 2015 (9) S.T.R. 913 (S.C.)* has concluded 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*. ... "

8. We also note that the decision relied upon by the Ld. AR in the case of *BCC Developers and Promoters Pvt. Ltd.(supra)* is not applicable to the facts of the case on hand. Further, we find that the decisions relied on by the Ld. Advocate support our view. The impugned demands cannot therefore sustain for which reason, we set aside the same and allow the appeal with consequential benefits, if any, as per law.

(Pronounced in open court on 14.12.2018)

(P Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

Sdd