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

Appeal No.ST/MISC/CT/41143/2017
ST/420/2012

[Arising out of Order-in-Original No.24/2012 dt.24.02.2012 passed by the Commissioner of Service Tax, Chennai]

Ceedeeyes Infrastructure Development Private Ltd Appellant

Versus

Commissioner of GST & Central Excise,
Chennai-South Commissionerate Respondent

ST/421/2012

[Arising out of Order-in-Original No.23/2012 dt.24.02.2012 passed by the Commissioner of Service Tax, Chennai]

Ceedeeyes Infrastructure Development Private Ltd Appellant

Versus

Commissioner of GST & Central Excise,
Chennai-South Commissionerate Respondent

Appearance:

Sh.M.A.Mudimannan, Advocate
For the Appellant

Shri K.Veerabhadra Reddy, ADC (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 : 18.12.2018

<u>FINAL ORDER No. 43144-43145/2018</u>

The issue involved in both these appeals being the same, they are heard together and disposed by this common order.

2. The appellants were issued show cause notices proposing to demand service tax under Works Contract Services. After due process of law, the original authority confirmed the demand under Construction of Residential Complex Services. Aggrieved by such confirmation of demand, the appellant is now before the Tribunal.

3. The Ld.Counsel, Sh.M.A.Mudimannan appeared and argued for the appellants. He submitted that the appellants were engaged in Construction of Residential Complex. They were registered under Renting of Immovable Properties Service as well as Construction of Residential Complex. They filed ST.3 returns under these categories for 2007-08 and 2008-09 as well as for the year 2009-10. For a short period they did not pay service tax under Construction of Residential Complex Services pursuant to the clarification of Board's Circular in 2007. The show cause notices have been issued alleging that the services fall under Works Contract Services. However, after adjudication, the Commissioner has classified the services under Commercial or Industrial Construction Services. He submitted that the works executed by the appellants are in the nature of composite contracts which involved both supply of materials as well as renting of services. It is argued by him that since the works executed are in the nature of composite contracts after 1/6/2007, the said services rendered by the appellants would not fall under Construction of Residential Complex Services. He relied upon the decision of the

Tribunal in the case of ***Real Value Promoters Pvt Ltd. And others reported in 2018-TIOL-2867-CESTAT-MAD.*** Further, the Commissioner has travelled beyond the scope of show cause notices in classifying the services under Construction of Residential Complex Services.

4. The Ld.AR,Sh.K.Veerabhadra Reddy supported the findings in the impugned order.

5. Heard both sides.

The details of the period involved and the amount is given in the table below, as furnished by the appellants :-

Appeal before CESTAT	Period of dispute	SCN No./DATE	O in O No./Date	Tax Amount as per OIO (after Cum tax)
ST/420/2012	Nov'2007 – Mar'2009	504/2010 Dt.17.9.2010	23 dt.24.2.2012	1,30,35,725 14,75,687
ST/421/2012	Apr'2009 – Dec'2009	631/2010 Dt.18.10.2010	24 dt.24.2.2012	66,41,257
Total Disputed Tax (Apart from Interest & Penalties)				**Rs.2,11,52,669**

6. At the foremost, it has to be mentioned that the appellant was discharging the service tax under Construction of Residential Complex. However, the show cause notice has been issued proposing to demand under Works Contract Services. After adjudication, the Commissioner held that the services are rightly classifiable under Construction of

Residential Complex Services and confirmed the demand raised in the show cause notice under Works Contract Service. The Commissioner has travelled beyond the scope of the show cause notice and such confirmation of demand on a different category of service is not sustainable. The department has not filed any appeal.

7. The issue whether composite contracts involving both element of services as well as supply of goods would fall under Commercial or Industrial Construction Services / Residential Complex Services was analysed by the Tribunal in the case of ***Real Value Promoters Pvt Ltd. And others*** (supra) and the Tribunal held that such composite contracts would not fall under the category of Commercial or Industrial Construction Services / Residential Complex Services and can be classified only under Works Contract Services. For the above reasons, the confirmation of demand under Construction of Residential Complex Services is un-sustainable and requires to be set aside. The impugned order is set aside. The appeal is allowed with consequential reliefs, if any. The Miscellaneous Application filed by the department for change of cause title is allowed.

(Operative part of the order pronounced in open court)

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S)
Member (Judicial)

vsr