

IN THE CUSTOMS, EXCISE & SERVICE TAX  
APPELLATE TRIBUNAL  
SOUTH ZONAL BENCH AT CHENNAI  
**Court : DB- B1**

**Appeal No. ST/512/2012**

(Arising out of Order-in-Original No. 19/2012 dated 24.02.2012 passed by the Commissioner of Service Tax, Chennai).

M/s. Ben Foundation Pvt. Ltd. : Appellant

Vs.

CCE & ST, Chennai : Respondent

Appearance

Shri M. Karthikeyan, Advocate  
for the Appellant

Shri K. Veerabhadra Reddy, ADC (AR)  
for the Respondent

**CORAM :**

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

Date of Hearing/ Decision: 01.01.2019

FINAL ORDER No. **40021/2019**

**Per Dinesha**

The appellant is engaged in construction of residential complexes and during the period under dispute they had undertaken construction of two residential projects. The period in dispute is 16.06.2005 to 31.03.2009. A Show Cause Notice (SCN) dated 29.07.2010 was issued on the ground that the construction activities carried out by the

appellant falls under the definition of Residential Complex Services and hence, the services rendered thereto warrants classification under "Construction of Complex Services". Accordingly Rs.5,18,96,396/- was sought to be demanded towards the service tax liability apart from applicable interest and penalties. Not convinced with the explanation offered by the appellant in response to the SCN, the Commissioner of Service Tax vide the impugned order dated 24.02.2012 not only confirmed the proposed demand but however, revised the demand towards service tax to Rs. 1,62,68,215/- by holding interalia that the assessee-appellant was not eligible for abatement with regard to construction activities completed prior to 16.06.2005 since no documentary evidence was filed; that in respect of both the projects viz., Le Orchard and Majestic Orchard, the demand was rightly made under the construction of residential complex services; that the benefit of both Notification Nos. 18/2005-ST & 1/2006-ST and the benefits under the "Works Contract" are required to be extended, etc. Aggrieved, the assessee has filed the present appeal before this forum.

2. Heard Shri M. Karthikeyan, Ld. Advocate for the assessee-appellant and Shri K. Veerabhadra Reddy, ADC(AR), for the Revenue.

3. During the course of hearing, Ld. Advocate argued that the service component in respect of composite works

contract are made taxable under works contract services w.e.f. 01.06.2007 and that whether such composite contract involving provision of service as well as transfer of property of any goods to be covered under CICS or CCS came to be settled by the Hon'ble Supreme Court in the case of *CCE Vs. L & T Ltd.* – 2013 (39) STR 913 (SC). He also drew our attention to a recent order of the Chennai Bench of the Tribunal in the case of *Real Value Promoters Pvt. Ltd.* – Final Order No. 42436 – 42438/2018 dated 18.09.2018 to buttress its contentions that the demands are confirmed under CCS in respect of composite works contract and therefore submitted that the demand raised in the impugned order cannot survive.

4. Per contra, Ld. DR appearing for the Revenue while supporting the findings of the adjudicating authority, also relied on an order of the Principal Bench of the Tribunal, New Delhi, in the case of *BCC Developers and Promoters Pvt. Ltd. Vs. CCE, Jaipur* – 2017 (52) STR 22 (Tri.-Del.) and a decision of the Hon'ble High Court of Delhi in the case of *G.D. Builders Vs. UOI* – 2013 (32) STR 673 (Del.).

5.1 We have considered the rival contentions and we have also gone through the decisions/orders relied upon during the course of the arguments. The decision of the Hon'ble High Court of Delhi relied on by the Ld. DR is on a very narrow compass wherein the challenge was for quashing of Explanation to Notification No. 15/2004-ST dated

10.09.2004, Notification No. 18/2005-ST dated 07.06.2005 and Notification No. 1/2006-ST dated 01.03.2006 and hence, this decision will not help the department in any way. In the other order of the Delhi Bench of the Tribunal, the challenge was not on the non-taxability but rather on the taxability under different head. In the case of Real Value Promoters relied on by the Ld. Advocate by the assessee, this Bench while following the decision of the Hon'ble Supreme Court in the case of L & T Ltd (supra) has held 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."

5.2 On going through the above, we find that the order of this Bench is more relevant and the demand in SCN vis-à-vis the legal position is squarely covered by Clause (d) (*supra*) therein; and following the ratio therefore, we are constrained to set aside the demand and the impugned order.

6. The appeal is therefore allowed with consequential reliefs, if any, as per law.

(Operative part of the Order pronounced in the open Court)

(P.DINESHA)  
MEMBER (JUDICIAL)

(MADHU MOHAN DAMODHAR)  
MEMBER (TECHNICAL)