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

S.No.	Appeal No.	Appellant	Respondent
1.	ST/668/2012	Tristar Accommodations Ltd.	Commissioner of Central Excise, Coimbatore
Arising out of Order-in-Original No.05/ST/COMMR/2012 dt. 22.02.2012 passed by Commissioner of Central Excise & Service Tax, Tirunelveli			

Appearance :

Ms. D.S. Vipula, Advocate
For the Appellant

Shri B. Balamurugan, AC (AR)
For the Respondent

CORAM :

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

Date of hearing / decision : 11.01.2019

FINAL ORDER No. 40134 / 2019

Per Madhu Mohan Damodhar

M/s. Tristar Accommodations Ltd., the appellants herein are registered with the department for providing services under the category of "Works Contract Services" (WCS) and Renting of Immovable Property Services (RIPS). Department was of the view that though appellant were engaged in the construction of Residential Complex Services (RCS), they were not registered under the category of RCS. On scrutiny of records, it emerged that appellant have been undertaking construction activities for the prospective customers and receiving amounts from the allotees of the flats towards construction of RCS; that the consideration received by appellants was liable to service tax under the category of RCS under section 65 (105 (zzzh) of the Finance Act, 1994.

Therefore, a show cause notice dt. 07.04.2010 and corrigendum dt.13.08.2010 was issued to them inter alia, proposing demand service tax of Rs.13,85,987/- with interest for the period April 2005 to January 2010, as also imposition of penalties under various provisions of law. In adjudication, after due process of law, the adjudicating authority vide impugned order dt. 17.06.2011 confirmed the service tax demand as proposed in the SCN with interest thereon and imposed equal penalty under Section 78 of the Finance Act, 1994. He also imposed penalty of Rs.10,000/- under Section 77 ibid. Hence this present appeal.

2. Today when the matter came up for hearing, on behalf of the appellant, Ld. Advocate Ms. Vipula, Advocate submits that issue as to whether a composite contract involving provision of service as well as transfer of property in goods could be covered under CICS and RCS from the date of introduction of service tax levy on such services stands finally settled by the Hon'ble Supreme Court in the case of *CCE & Cus., Kerala Vs L&T Ltd.* [2015 (39) STR 913 (SC)]. Ld. Advocate submits that the very same issue is also squarely covered by the recent decision of this Bench vide Final Order No.42436-42438/2018 dt. 18.09.2018 [2018-TIOL-2867-CESTAT-MAD].

3. Heard Ld. A.R Shri B. Balamurugan who supports the impugned order.

4. After hearing both sides, and on perusal of records, we find merit in the Ld. Advocate is correct in his assertion that the issue in dispute is squarely covered by the case laws cited by him, in particular, that of the Hon'ble Apex Court in *M/s.Larsen & Toubro Ltd. (*supra*)* for the period upto 01.06.2007.

5. For the period after 01.06.2007, the Chennai Bench of the CESTAT in the case of *M/s.Real Value Promoters Pvt. Ltd. & Ors. Vs Commissioner of G.S.T & Central Excise, Chennai & Ors*. vide Final Order Nos.42436-42438/2018 dated 18.09.2018 have extrapolated the ratio laid down by the Hon'ble Apex Court in *M/s.Larsen & Toubro Ltd*. (supra) and held that even after 01.06.2007, service tax liability for composite contracts can only be demanded under Works Contract Service and not under CICS etc. For this reason, the impugned order demanding the amount of tax liability under CICS for a composite contract will not survive and will require to be set aside, which we hereby do.

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

(operative part of the order pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

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