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

S.No.	Appeal No.	Appellant	Respondent
1.	ST/324/2012	Shifa Housing Pvt. Ltd.	Commissioner of Central Excise & Service Tax Tirunelveli
2.	ST/383/2012	Commissioner of Central Excise & Service Tax Tirunelveli	Shifa Housing Pvt. Ltd.
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 :

Shri G. Natarajan, Advocate
Shri M.Mariappan, Advocate
For the Appellant

Shri A.Cletus, 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 : 09.01.2019

FINAL ORDER No. 40132-40133 / 2019

Per Bench

M/s. Shifa Housing Pvt. Ltd. the assessee herein are providers of services under the category of construction of Residential Complex Services (RCS) to various individuals in a single layout known as 'Golden City'. The appellants were issued show cause notices alleging non-registration with the department, non-payment of service tax under Commercial or Industrial Construction Services (CICS). It was noticed that appellant though filed the ST-3 returns they had not included the value of taxable services in respect of the their projects and failed to disclose the details of payments received for providing services in relation to

Construction of Residential Complex Services (RCS). Accordingly, the following show cause notices were issued for different periods as tabulated under :

SCN No. & date	Period	Service Tax Demand	Penalty imposed under Section
02/COMMR/ST/2010 dt.12.03.2010	2006-07 to 2007-08 and 2008-09	Rs.67,44,398/-	76, 77 & 78 of the Finance Act, 1994
15/ADC/ST/2010 dt. 20.09.2010	04/2009 to 11/2009	Rs.7,11,527/-	76, 77 & 78 of the Finance Act, 1994
04/2011 dt. 28.03.2011	12/2009 to 03/2010	Rs.1,10,647	76, 77 & 78 of the Finance Act, 1994

In adjudication, after due process of law, the adjudicating authority vide impugned order dt. 22.02.2012 confirmed the total demand of service tax of Rs.75,66,572/- 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 Shri G. Natarajan, assisted by Shri M.Mariappan, 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 A. Cletus 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. Accordingly, assessee's appeal is allowed with consequential benefits, if any, as per law. For the same reasoning, Department Appeal ST/383/2012 is dismissed.

(operative part of the order pronounced in court)

(P. Dinesha)
Member (Judicial)

(Madhu Mohan Damodhar)
Member (Technical)

gs