IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

ST/00594/2012

[arising out of Order-in-Appeal No.134/2012, dated 30.06.2012 passed by the Commissioner of Customs & Central Excise (Appeals), Trichirapalli]

M/s. PRIME BUILDERS APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE & SERVICE TAX, TRICHY RESPONDENT

Appearance:

For the Appellant	Ms. Kanthi Visalakshmi, Adv.
For the Respondent	Shri S. Govindarajan, AC (AR)

CORAM:

Hon'be Smt. Sulekha Beevi C.S, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing/decision **28-02-2019**

FINAL ORDER NO. **40517 / 2019**

Per Bench:

The above appeal is filed by the appellant aggrieved by the order passed by Commissioner (Appeals), who upheld the demand, interest as well as penalties imposed under CICS.

2. The brief facts are that the appellants are engaged in providing Construction Services to their client and were discharging service tax under the category of Works Contract Service with effect from 01.06.2007. During the audit of accounts of their clients M/s. Rane Brake Linings Ltd., Tiruchirapalli, M/s. Rane (TRW) Steering Systems, Viralimalai and M/s. Rane Engine Valve Ltd., Viralimalai, it was found that the appellants had provided Construction Services to

them during the period 2005-06 to May, 2010 and received payments of which appropriate service tax was not discharged. The department was of the view that these services would fall under CICS for the period from 16.06.2005 onwards. Show-cause notices were issued proposing to demand service tax for such period under CICS. After due process of law, the original authority confirmed demand, interest and penalty. On appeal, the Commissioner (Appeals) modified the order by granting benefit of abatement to the appellant by reducing the penalty.

3. On behalf of the appellant, the learned counsel Ms. Kanthi Visalakshmi appeared and argued the matter. She submitted that the period involved is from 2005-06 to May, 2010. The entire work carried out by the appellant is in the nature of composite contracts, which involves both supply of materials as well as rendering of services. For the period prior to 01.06.2007, the contention of the appellant is that the works are composite in nature involving not just labour but also materials. They had furnished all details including copies of invoices at the stage of Commissioner (Appeals). The demand has been based on the payments received by appellants as per the audit of account of the three service recipients, viz., M/s. Rane Brake Lining, M/s. Rane TRW Steering System and M/s. Rane Engine Valves. The department has not recorded any statement from these service recipients to verify whether the value is inclusive of cost of materials. Further, there is no evidence to show that appellant has received any amount in excess of that reflected in the accounts of the service recipients.

4. The adjudicating authority in para 19 of the Order-in-Original has concluded that the services provided do not fall under

Works Contract Service before or after 01.06.2007 for the reason that appellants did not produce any sales tax/VAT invoices to show that there was sale of materials to the service recipients. In fact, the appellants had used their own materials in the contract. The appellants had claimed abatement on the value of materials as per Notification No.15/2004 and Notification No.1/2006. This was wrongly denied stating that appellant did not produce documents to show sale/supply of materials. All this would go to show that the contracts were composite in nature involving both supply of materials and provision of labour.

5. In respect of M/s. Rane Engine Valves Ltd., the Commissioner (Appeals) has allowed abatement in respect of certain works and disallowed abatement for certain works stating that these are services simplicitor. Similarly, in the case of M/s. Rane TRW Steering System, it was held that the purchase order indicates services with description of labour charges for civil work and no other evidence to show that consideration is inclusive of materials supplied. Bill No.2012 and other documents though showed labour and material was not accepted stating that it is not signed. For these reasons, services provided to M/s. Rane Brake Lining, the abatement was disallowed stating that the purchase order only showed description of services as 'standard'. Though, appellants had furnished necessary documents to show that the contracts/works executed were composite in nature, the authorities below have not examined or considered these documents in the correct legal perspective.

6. All demands have been made under CICS even though the works are composite in nature. As per the ratio laid down by the

Hon'ble Apex Court in the case of *Commissioner of Central Excise & Customs, Kerala Vs M/s. Larsen & Touboro Ltd.,* reported in *2015 (39) S.T.R.913 (S.C.)* the demand cannot sustain prior to 01.06.2007 for the contracts which are composite in nature. For the period after 0.06.2007, the decision of the Tribunal in the case of M/s. *Real Value Promoters (P) Ltd.,* vide Final Order No.42436-42438/2018, dated 18.09.2018 reported in *2018-TIOL-2867-CESTAT-MADRAS* would apply and the demand under CICS cannot sustain for composite contracts.

7. The learned Authorised Representative for the Revenue Shri S. Govindarajan supported the impugned order. He submited that the appellant had not furnished all particulars before Commissioner (Appeals). The confirmation of demand is legal and proper.

8. Heard both sides.

9. From the impugned order, what comes to fore is that the LAA has found that in some cases both labour and materials have been supplied. However, in some cases, other contract services, for example, those rendered to M/s. Rane Brake Linings Ltd., M/s. Rane (TRW) Steering Systems and M/s. Rane Engine Valve Ltd., the Commissioner (Appeals) has found that the appellants concerned have not supplied sufficient evidence in support of their claim that contracts were in fact composite in nature. At the same time, the learned advocate has drawn our attention to the written submissions made by them before Commissioner (Appeals). She pointed out certain purchase orders in which it is shown that materials were supplied. But authorities below have considered this as service simplicitor.

10. In the circumstances, we find that there is some confusion on facts which could be best resolved by remanding the matter to the adjudicating authority for purpose of ascertaining whether all the contracts involved in the appeal are in fact composite involving both labour and material or otherwise. The appellants would be required to produce all necessary evidence in support of their claim. When the contracts are indeed found as composite there shall be no service tax levied. Service tax demand made thereon will extinguish as the demands have been made under CICS and not under Works Contract Services in view of the ratio laid down by the decisions of the Supreme Court and the Tribunal relied upon supra by Ld. Advocate. In such readjudication, the concerned adjudicating authority will also take note of the fact that in case where the abatements has been given in para 6.7 of the impugned order by Commissioner (Appeals), such contracts would by implication necessarily have to be considered as composite contracts. In any case, there cannot be imposition of penalty in view of the fact that the issue is interpretational and mired in litigation for a long time till it was finally settled by Hon'ble Apex Court in October, 2015. Appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

ksr
18-03-2019

	DRAFT			Remarks
	I	II	III	
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