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

ST/40877/2017

[arising out of Order-in-Original No.09/2012-Commnr., dated 30.11.2012 passed by the Commissioner of Central Excise, Coimbatore]

M/s.PRESIDIUM CONSTRUCTIONS COIMBATORE (P) LTD — APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, COIMBATORE — RESPONDENT

ST/40566/2013

[arising out of Order-in-Original No.09/2012-Commnr., dated 30.11.2012 passed by the Commissioner of Central Excise, Coimbatore]

COMMISSIONER OF CENTRAL EXCISE, COIMBATORE — APPELLANT

Versus

M/s. PRESIDIUM CONSTRUCTIONS COIMBATORE (P) LTD. — RESPONDENT

Appearance:

For the Assessee	Ms. D. Naveena, Adv.
For the Revenue	Shri K. Veerabhadra Reddy, ADC (AR)

CORAM:

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

Date of hearing/decision **21-03-2019**

FINAL ORDER NOs. **40607-40608 / 2019**

Per Bench:

Both these appeals arising out of the same order are heard together and taken-up for disposal by this common order. The party referred to as "Assessee" and department referred to as "Revenue" for the sake of convenience.

2. Brief facts are that the appellants are providing Construction Services. It appeared to the department that the appellants have not discharged service tax under Construction of Residential Complex Services for the different projects carried out by them. Show-cause notice was issued for the period Aug.'05 to Mar.'10 proposing to demand the service tax along with interest and also for imposing penalties. After due process of law, the Commissioner confirmed the demand, interest and imposed penalties. Hence this appeal.

3. On behalf of the appellant, the learned counsel Ms. D. Naveena submitted that the demand is raised in the show-cause notice under the category of Construction of Residential Complex Services. The works carried out by the appellant are in the nature of composite contracts involving both supply of labour as well as supply of materials. This is abundantly lclear from the show-cause notice as well as annexures to the Order-in –Original. That for the period prior to 01.06.2007, 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.)* has held that the demand of service tax on composite contracts involving both supply of materials and labour cannot sustain. With regard to the period after 01.06.2007, the learned counsel relied upon the decision in the case of M/s. Real Value Promoters *Pvt. Ltd.,* vide Final Order No.42436-42438/2018, dated 18.09.2018 reported in *2018-TIOL-2867-CESTAT-MADRAS* to argue that the demand under Construction of Residential Complex Services cannot sustain in the case of composite contract and the same can be demanded only under Works Contract Service.

4. The learned Authorised Representative for the Revenue Shri K. Veerabhadra Reddy supported the findings in the impugned order. The learned Authorised Representatives relied upon the decision in the case of M/s. GDS Builders.

5. The period involved is from Jun.'05 to Mar.'10. From the records, it is seen that the contracts are composite in nature involving both supply of materials as well as rendering of services. The agreement is a Tripartite agreement where the developer had to put in 50% and the land owner had to put in 50% which was the total value for the constructions. The demand has been quantified by authority below after giving abatement from the total value. Thus it is very much clear that the contracts are composite in nature. The decision in the case of *M/s. Larsen & Toubro Ltd.,* (supra) would apply to the period prior to 01.06.2007 wherein it has been held that the demand of service tax cannot sustain for composite contracts. So also, the decision of Tribunal in the case of *M/s. Real Value Promoters* would apply to the period after 01.06.2007.

6. The learned Authorised Representative for Revenue Shri K. Veerabhadra Reddy, ADC (AR) has relied upon the decision in the case of M/s. GDS Builders. The said case has been considered by the Apex Court in the case of *M/s. Larsen & Toubro Ltd.* Therefore, the said decision is of no assistance to the Revenue.

7. From the foregoing, we find that the demand cannot sustain. The impugned order is set aside and the appeal is allowed.

8. Consequently, the appeal filed by the department against dropping part of the demand is without any merits. The same is dismissed.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S)
MEMBER (JUDICIAL

ksr
26-03-2019

	DRAFT			Remarks
	I	II	III	
Date of dictation	21.03.2019			
Draft Order - Date of typing	22.03.2019			
Fair Order Typing	26.03.2019			
Date of number and date of dispatch	27.03.2019			