CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. III

Service Tax Appeal No. 538 of 2010

(Arising out of Order-in-Original No. 30/2010 dated 30.04.2010 passed by the Commissioner of Service Tax, 692, Anna Salai, M.H.U. Complex, Nandanam, Chennai – 600 035.)

M/s. Madeena Constructions, : **Appellant**
No. 19, Arunachalam Road,
Dasarathapuram, Saligramam,
Chennai – 600 093

VERSUS

The Commissioner of G.S.T. & Central Excise, : **Respondent**
Chennai South Commissionerate,
No. 692, Anna Salai, MHU Complex,
Nandanam, Chennai – 600 035

APPEARANCE:

Shri. M.A. Mudimannan, Advocate for the Appellant

Ms. T. Usha Devi, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. MADHU MOHAN DAMODHAR, MEMBER(TECHNICAL)

FINAL ORDER NO. 40648 / 2019

DATE OF HEARING: 20.03.2019

DATE OF DECISION: 20.03.2019

PER BENCH :

Brief facts are that the appellants are a proprietorship concern engaged in construction activities.

2. A Show Cause Notice was issued to them proposing to demand service tax under the category of 'Construction of Commercial and Residential Complexes' for the period from 10.09.2004 to 31.03.2008. After due process of law, the Commissioner vide impugned order dated

30.04.2010 confirmed the demand, interest and imposed penalties. Hence, this appeal.

3.1 On behalf of the appellant, Ld. Advocate Shri. M.A. Mudimannan appeared and argued the matter. He submitted that the appellant had undertaken various projects namely, "Aishwaryam Apartments", "Pankajam Gardens", "Kings Park" and "Queens Park" during the disputed period. All these construction activities are in the nature of composite contracts and involve both supply of materials as well as rendition of services. This is very much clear from the Annexure to the Show Cause Notice wherein the demand has been quantified after giving the benefit of abatement at the rate of 67% to the appellant.

3.2.1 He further argued that for the period prior to 01.06.2007, the demand cannot sustain as per the decision of the Hon'ble Apex Court in the case of ***Commissioner of C.Ex. & Cus., Kerala Vs. M/s. Larsen & Toubro Ltd. reported in 2015 (39) S.T.R. 913 (S.C.).*** With regard to the period after 01.06.2007, Ld. Advocate relied upon the decision of the Tribunal in the case of ***M/s. Real Value Promoters Pvt. Ltd. Vs. Commissioner of G.S.T. & Central Excise Chennai reported in 2018-TIOL-2867-CESTAT-MAD***

3.2.2 He also relied upon the decision of the Hon'ble High Court of Delhi in the case of ***Suresh Kumar Bansal Vs. Union of India reported in 2016 (43) S.T.R. 3 (Del.)*** to argue that the Hon'ble High Court had held that the construction of complex intended for sale by builders was *ultra vires* as there was no statutory mechanism to ascertain the value of services component subject of levy and that service tax could not be levied on value of undivided share of land acquired by buyer of dwelling unit or on value of goods which are incorporated in project by developer. He therefore prayed that the demand may be set aside.

4. On the other hand, Ld. AR Ms. T. Usha Devi appearing on behalf of the respondent supported the findings in the impugned order.

5. Heard both sides.

6. The demand is raised in the Show Cause Notice under the category of 'Construction of Commercial and Residential Complex Service'. It is brought out from the evidence on record that the construction activities carried out by the appellant are in the nature of composite contracts which involve both supply of raw materials as well as services. The Annexures to the Show

Cause Notice show that the demand has been quantified by the Department after giving abatement of 67% to the appellant. This would establish that the contracts are composite in nature.

7. The Hon'ble Apex Court in the case of *M/s. Larsen & Toubro Ltd. (supra)* has held that the demand of service tax cannot sustain in the case of composite contracts prior to 01.06.2007. After 01.06.2007, the Tribunal in the case of *M/s. Real Value Promoters Pvt. Ltd. (supra)* has held that there is no liability to pay service tax under the category of Construction of Residential Complex Service/Commercial or Industrial Construction Service when the contracts are in the nature of service simpliciter.

8. Following the aforesaid decisions, we are of the view that the demand cannot sustain. The impugned order is set aside.

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

(Operative part of the order was pronounced in open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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