CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. IV

Service Tax Appeal No. 40434 of 2013

(Arising out of Order-in-Appeal No. 69/2012-ST dated 15.11.2012 passed by the Commissioner of Customs and Central Excise (Appeals), No. 1, Foulks Compound, Annai Medu, Salem – 636 001)

M/s. Chona Chola Builders : **Appellant**
4/96-1 Netaji Road,
Kattur, Alagapuram,
Salem – 636 016

VERSUS

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Salem Commissionerate,
No.1, Foulks Compound, Anaimedu,
Salem – 636 001

WITH

Service Tax Appeal No. 40538 of 2013

(Arising out of Order-in-Appeal No. 69/2012-ST dated 15.11.2012 passed by the Commissioner of Customs and Central Excise (Appeals), No. 1, Foulks Compound, Annai Medu, Salem – 636 001)

The Commissioner of G.S.T. & Central Excise, : **Appellant**
Salem Commissionerate,
No.1, Foulks Compound, Anaimedu,
Salem – 636 001

VERSUS

M/s. Chona Chola Builders **: Respondent**
4/96-1 Netaji Road,
Kattur, Alagapuram,
Salem – 636 016

APPEARANCE:

Ms. Amrutha Arvind, Advocate for the Appellant

Shri. B. Balamurugan, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. MADHU MOHAN DAMODHAR, MEMBER(TECHNICAL)
HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NOs. 40644-40645 / 2019

DATE OF HEARING: 04.04.2019

DATE OF DECISION: 04.04.2019

PER MADHU MOHAN DAMODHAR :

The facts of the case are that the assessee were engaged in the Construction of Residential Complexes.

2.1 Proceedings were initiated against them by way of a Show Cause Notice dated 04.10.2010 wherein it was alleged that the assessee were required to pay the tax liability of Rs. 24,49,284/- for the period from 16.06.2005 to 30.09.2007 under the service tax category of 'Construction of Residential Complex'. The Original Authority confirmed the tax liability of Rs. 24,14,726/- with interest thereon, appropriated an amount of Rs. 20,80,038/- paid up by the assessee and imposed penalties under Sections 76, 77 and 78 of the Finance Act, 1994.

2.2.1 In appeal, the Commissioner (Appeals) vide impugned Order No. 69/2012-ST dated 15.11.2012 modified the order passed by the Original Authority by setting aside service tax to the tune of Rs. 9,00,524/- out of Rs. 24,14,726/- demanded, with proportionate reduction in the levy of interest and penalty. Aggrieved by the above confirmation of demand, the assessee has filed Appeal No. ST/40434/2013.

2.2.2 The Revenue is also aggrieved by the impugned order in respect of the relief granted of Rs. 9,00,524/- and has filed Appeal No. ST/40538/2013 with a prayer to restore the order of the Original Authority.

3.1 Today when the matter came up for hearing, on behalf of the assessee, Ld. Advocate Ms. Amrutha Arvind submits that the assessee were only performing Works Contracts. The Show Cause Notice, at paragraph 11, has also considered the fact that the assessee were supplying both materials and labour and therefore, has calculated the tax liability after giving an abatement of 67%. Since the Show Cause Notice has been issued only under 'Construction of Residential Complex Service', in view of the judgement of the Hon'ble Apex Court in the case of ***Commissioner of Central Excise & Customs Vs. M/s. Larsen and Toubro Ltd. reported in 2015 (8) T.M.I. 749 (S.C.)*** and that of the Tribunal in the case of ***M/s. Real Value Promoters Pvt. Ltd. & Ors. Vs. Commissioner of G.S.T. &***

Central Excise, Chennai reported in 2018 (9) T.M.I. 1149 – CESTAT Chennai, the demand under this category cannot be sustained.

3.2 In respect of the appeal filed by the Department, Ld. Advocate for the assessee submits that when the demand itself cannot sustain, the Revenue appeal cannot have any justification.

4. On the other hand, Ld. AR appearing on behalf of the respondent opposes the appeal filed by the assessee. He also reiterates the grounds of appeal in respect of Appeal No. ST/40538/2013 filed by the Department.

5. After hearing both sides, we find that the Ld. Advocate for the assessee is correct in her assertion that the matter is indeed covered by the case laws of *M/s. Larsen and Toubro Ltd. (supra)* and *M/s. Real Value Promoters Pvt. Ltd. (supra)* relied upon by her. Thus, when the service performed is Works Contract Service for the entire period covered by the impugned order, the demand of service tax under 'Construction of Residential Complex' instead will only serve to vitiate the proceedings *ab initio* in view of the ratio laid down in the aforesaid case laws.

6. In the circumstances, the entire demand cannot be sustained and will require to be set aside, which we hereby do. For the same reasons, the appeal filed by the Department cannot succeed and is hereby rejected.

7. To sum up :

(i) Assessee Appeal No. ST/40434/2013 is allowed *in toto* with consequential benefits, if any, as per law.
(ii) Department Appeal No. ST/40538/2013 Is dismissed.

8. Both the appeals are disposed of on above terms.

(Dictated and pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(P. DINESHA)
MEMBER (JUDICIAL)

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