Appln.No.ST/Misc[CT]/41131/2017
Appeal No.ST/517/2012

CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. III

Service Tax Miscellaneous Application No.41131 of 2017
(on behalf of the respondent)

and

Service Tax Appeal No.517 of 2012

(Arising out of Order-in-Original No.42/2012 dt. 29.02.2012 passed by the Commissioner of Service Tax, Chennai)

M/s. The Chisel : **Appellant**
No.73B, Pushpa Flats
II Floor
Abiramapuram IV Street,
Chennai 00 018.

VERSUS

The Commissioner of GST & Central Excise **: Respondent**
Chennai South Commissionerate,
M.H.U. Complex, 692, Anna Salai,
Nandanam
Chennai 600 035.

APPEARANCE:

Shri P.C. Anand, Consultant
For the Appellant

Ms. K. Komathi, JC (AR)
For the Respondent

CORAM : HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER(TECHNICAL)

FINAL ORDER No. 40354 / 2020

DATE OF HEARING: 13.02.2020
DATE OF DECISION: 13.02.2020

PER : SULEKHA BEEVI C.S

Brief facts of the case are that appellants are engaged in manufacture and trading of wooden cup boards / storage units etc. During the course of audit of accounts, it was noticed that though the appellant had registered under Commercial or Industrial Construction Service (CICS) during August 2005, they did not charge service tax on this category till June 2007. The appellant was of the view that since they provided composite works contacts orders, they are not liable to pay service tax on these activities. Show cause notice was issued for the period from 2005 to 1.6.2007 proposing demand of service tax under the category of Commercial or Industrial Construction Service. After due process of law, the original authority held that the said activities do not fall under Works Contract Service (WCS) but would fall under CICS and confirmed the demand, interest as well as imposed penalty Aggrieved by such order, appellant is now before the Tribunal.

2. Ld. Consultant Shri P.C. Anand appearing for the appellant submitted that the activity of appellant is in the nature of Works Contracts Service since it involves supply of goods as well as rendering of services. After 1.6.2007, the appellants have obtained registration under WCS category for discharge of service tax which has been accepted by the department. Since these activities fall under composite nature of contracts, they are not subject to levy of service tax prior to 1.6.2007 as held by the Supreme Court in the case of *CCE & Cus., Kerala* Vs Larsen & Toubro Ltd.- 2015 (39) STR 913 (SC).

3. Ld. A.R Ms. K. Komathi supported the findings in the impugned order.

4. On perusal of records as well as hearing the submissions of both sides, we find that works executed by the appellant is composite in nature involving both supply of goods as well as rendering of service. The department has agreed that the appellant's activity is covered by Works Contract Service for the period subsequent to 1.6.2007. We note that the Hon'ble Supreme Court in the case of *Commissioner of Central Excise & Customs, Kerala Vs Larsen & Toubro Ltd.* (supra) has held that activities which gets covered under Works Contracts Service w.e.f. 1.6.2007 cannot be classified under

any other service for the period prior to 1.6.2007. Ratio of the said judgment is squarely applicable in the present case. We therefore allow the appeal and set aside the impugned order. MA filed by department for change of cause title is allowed.

(Dictated and pronounced in open court)

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

(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

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