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

ST/88/2008

(Arising out of Order-in-Original No. 7/2008 dated 10.1.2008 passed by the Commissioner of Central Excise, Chennai)

M/s.G.K. Shetty Builders Private Ltd. Appellant

Vs.

Commissioner of Service Tax, Chennai Respondent

Appearance

Shri V.S. Manoj, Advocate for the Appellant
Shri A. Cletus, Addl. Commissioner (AR) for the Respondent

CORAM

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

Date of Hearing / Decision: **09.08.2017**

Final Order No. 41559/2017

Per Bench

The appellant is engaged in execution of works contract such as construction of residential and commercial complex. The main issue in the above case is with respect to demand of service under Commercial or Industrial Construction Services. At the time of hearing, the learned counsel Shri V.S. Manoj submitted that the period involved is prior to 1.6.2007 and therefore the demand in respect of Commercial or Industrial Construction Services / Works Contract Service would be covered by the judgment in the case of Commissioner of Central Excise, Kerala Vs. Larsen & Toubro Ltd. – 2015 (39) STR 913 (SC).

Customs, Excise & Service Tax Appellate Tribunal

2. The second issue on which demand has been raised is that the appellant availed credit on inputs before making payment in regard to the invoices issued. He submitted that there is no dispute as to the eligibility of credit and at the most the same would be a procedural lapse. He also submitted that the appellant paid the money in respect of inputs/invoices within three months of taking the credit.

3. The learned AR Shri A. Cletus reiterated the findings in the impugned order.

4. We find that the issue with regard to service tax on Commercial or Industrial Construction Services is prior to 1.6.2007 and stands covered in the case of Larsen & Toubro Ltd. (supra) as submitted by the learned counsel for the appellant. Following the same, we hold that the demand in respect of Commercial or Industrial Construction Services is unsustainable. The second issue with regard to eligibility of credit availed on inputs before making payment regarding to the goods, in our view, can only be a procedural lapse. Taking into consideration that the appellants have paid the money within a short-time, we find that the demand is unsustainable. The impugned order is set aside and the appeal is allowed with consequential relief if any.

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

Sulekha Beevi

(Madhu Mohan Damodhar)
Member (Technical)

(Sulekha Beevi C.S.)
Member (Judicial)

Rex

Customs, Excise & Service Tax Appellate Tribunal

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सहायक पंजीकार / Asst. Registrar
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