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

ST/197/2010

(Arising out of Order-in-Appeal No.7/2010-ST (SLM) dated 29.1.2010 passed by the Commissioner of Customs and Central Excise (Appeals), Salem)

Commissioner of Central Excise, Salem — Appellant

Vs.

M/s. Sri Krishna Construction Company — Respondent

Appearance

Smt. Hemavathy, Commissioner (AR) for the Appellant
Ms. Minchu Mariam Punnose, Advocate 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: **26.10.2017**

Final Order No. 42381/2017

Per Bench

The case of the department is that the respondents are engaged in construction of residential complex by collecting the amounts from their clients for the construction of residential flats. They have not paid the service tax and not filed ST 3 returns and they have willfully suppressed the value of taxable services wholly with intent to evade payment of service tax. Hence show cause notice was issued proposing to demand service tax along with interest and also to impose penalty.

After due process of law, the adjudicating authority confirmed the demand proposed in the show cause notice along with interest and also imposed penalties under sections 76, 77 and 78 of the Finance Act, 1994. In appeal, Commissioner (Appeals), set aside the adjudication order on the ground of limitation and allowed the appeal of the respondent. Hence department has filed the present appeal.

2. On behalf of the appellant, ld. AR Ms. Hemavathi reiterated the grounds of the appeal.

3. Ld. counsel Ms. Minchu Mariam Punnose supports the order passed by the Commissioner (Appeals) and submitted that the period involved is between June 2005 and March 2007 and the issue is squarely covered by the judgment of the Hon'ble Supreme Court in the case of Commissioner Vs. Larsen & Toubro Ltd. – 2015 (39) STR 390 (SC).

4. Heard both sides.

5. After hearing both sides we find that the period involved in the case is from June 2005 to March 2007. That the issue being a works contract whether subject to service tax prior to 1.6.2007 has been settled by the judgment of the Hon'ble Supreme Court in the case of Commissioner Vs. Larsen & Toubro Ltd. – 2015 (39) STR 390 (SC). We also note that the coordinate Bench in the case of CCL Products (India) Ltd. Vs. Commissioner of Central Excise, Guntur – 2017 (48) STR 50 (Tri. – Hyd.), in a similar matter had set aside the demand

relying upon the judgment of the Hon'ble Supreme Court on identical set of facts.

6. Following the same, we find no ground to interfere with the order passed by Commissioner (Appeals). The impugned order is upheld and the appeal filed by the Revenue is dismissed.

(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
सीमाशुल्क उत्पादशुल्क एवं सेवा कर अपील अधिकरण / (CESTAT)
चेन्नै / CHENNAI