IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
<u>CHENNAI</u>

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 447 of 2012

(Arising out of Order-in-Original No. 53/2012 dated 26.03.2012 passed by the Commissioner of Service Tax, 692, M.H.U. Complex, Nandanam, Chennai – 600 035)

M/s. Dharani Developers Private Limited **: Appellant**
No. 1, Venus Colony, II Street,
Alwarpet,
Chennai – 600 018

VERSUS

The Commissioner of Central Excise and Service Tax **: Respondent**
Chennai-II Commissionerate
692, M.H.U. Complex, Anna Salai, Nandanam,
Chennai – 600 035

<u>APPEARANCE</u>:

Smt. S. Vishnupriya, Learned Advocate for the Appellant

Smt. K. Komathi, Learned Advocate Commissioner for the Respondent

<u>CORAM</u>:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40081 / 2023

DATE OF HEARING: 20.02.2023

DATE OF DECISION: 20.02.2023

Order : [Per Hon'ble Mr. P. Dinesha]

This appeal is filed by the assessee against the Order-in-Original No. 53/2012 dated 26.03.2012 passed by the Commissioner of Service Tax, Chennai whereby the Commissioner-Adjudicating Authority has demanded the Service Tax under Section 73(1) read with Section 73(2) of the Finance Act, 1994 for the period from September 2007 to November 2009, along with applicable interest and penalty.

2. Brief facts, which are relevant for our consideration and which are undisputed, are that the appellant is engaged in providing Construction of Residential Complex Services and during the disputed period, was a real estate developer engaged in promotion of land, construction of building and sale of residential properties at PGVP Village, Coimbatore, for which a composite contract is entered into with the buyers. A Show Cause Notice No. 08/2011 dated 12.01.2011 was issued to the assessee thereby proposing to levy Service Tax with respect to the various projects executed by the appellant under Construction of Residential Complex Service, in response to which it appears that the appellant filed a detailed reply dated 28.03.2011 denying the tax liability as proposed in the Show Cause Notice.

3. The Commissioner, however, not satisfied with the reply, proceeded to confirm the demand vide impugned Order-in-Original, against which the present appeal has been filed before this forum.

4. Heard Smt. S. Vishnupriya, Learned Advocate for the appellant and Smt. K. Komathi, Learned Additional Commissioner for the Revenue. After hearing both sides, we find that the only issue to be decided is: whether the demand confirmed in the impugned order is correct?

5. The Learned Advocate for the appellant would submit at the outset that the issue involved is no more *res integra* as the same stands settled by the decision of the Hon'ble Apex Court in the case of *Commissioner of C.Ex. & Cus., Kerala v. M/s. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)],* which has been followed by the Chennai Bench of the CESTAT in the case of *M/s. Real Value Promoters Pvt. Ltd. v. Commissioner of G.S.T. and Central Excise, Chennai & ors. [Final Order Nos. 42436-42438/2018 dated 18.09.2018 – CESTAT Chennai].* This very Bench, in the case of *M/s. Real Value Promoters Pvt. Ltd. (supra),* has considered the orders of various Benches of the CESTAT

wherein the decision in the case of *M/s. Larsen & Toubro Ltd. (supra)* of the Hon'ble Apex Court was considered, and has concluded as under:-

> *"8. In the light of the discussions, findings and conclusions above and in particular, relying on the ratios of the case laws cited supra, we hold as under:-*
>
> *a. The services provided by the appellant in respect of the projects executed by them for the period prior to 1.6.2007 being in the nature of composite works contract cannot be brought within the fold of commercial or industrial construction service or construction of complex service in the light of the Hon'ble Supreme Court judgment in Larsen & Toubro (supra) upto 1.6.2007*
>
> *b. For the period after 1.6.2007, service tax liability under category of "commercial or industrial construction service" under Section 65(105)(zzzh) ibid, "Construction of Complex Service" under Section 65(105)(zzzq) will continue to be attracted only if the activities are in the nature of services" simpliciter.*
>
> *c. For activities of construction of new building or civil structure or new residential complex etc. involving indivisible composite contract, such services will require to be exigible to service tax liabilities under "Works Contract Service" as defined under section 65(105)(zzzza) ibid.*
>
> *d. The show cause notices in all these cases prior to 1.6.2007 and subsequent to that date for the periods in dispute, proposing service tax liability on the impugned services involving composite works contract, under 'Commercial or Industrial Construction Service' or 'Construction of Complex' Service, cannot therefore sustain. In respect of any contract which is a composite contract, service tax cannot be demanded under CICS / CCS for the periods also after 1.6.2007 for the periods in dispute in these appeals. For this very reason, the proceedings in all these appeals cannot sustain."*

6. *Per contra*, the Learned Additional Commissioner for the Revenue relied on the findings given in the impugned order, but however, was unable to distinguish the above rulings relied upon by the Learned Advocate for the appellant.

7. We find that the above ruling of the Chennai Bench of the CESTAT covers the period post 01.06.2007 also and hence, we are satisfied that the ratio laid down therein applies to the case on hand. Therefore, we accept the submissions of the Learned Advocate for the appellant that the issue is settled in favour of the appellant.

8. In view of the above discussions, we set aside the demand as well as the impugned order and allow the appeal with consequential benefits, if any, as per law.

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

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sd/-
(M. AJIT KUMAR)
MEMBER (TECHNICAL)

Sdd