IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Service Tax Appeal No. 42192 of 2013

(Arising out of Order-in-Appeal No. CMB-CEX-000-APP-232-13 dated 25.07.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), 6/7 A.T.D. Street, Race Course Road, Coimbatore – 641 018)

M/s. Cotton City Developers Private Limited **: Appellant**
1029, Avinashi Road,
Coimbatore – 641 018

VERSUS

The Commissioner of Central Excise **: Respondent**
6/7 A.T.D. Street, Race Course Road,
Coimbatore – 641 018

APPEARANCE:

Shri G. Natarajan, Learned Advocate for the Appellant

Shri M. Ambe, Learned Deputy Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40236 / 2023

DATE OF HEARING: 07.03.2023

DATE OF DECISION: 31.03.2023

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

This appeal is filed by the taxpayer against the impugned Order-in-Appeal No. CMB-CEX-000-APP-232-13 dated 25.07.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore.

2.1 The contentions against the impugned order, urged by the appellant, *inter alia*, are that the appellant was involved in the construction of residential units and the *modus operandi* was that the appellant would execute a sale deed for the sale of undivided share in the land in favour of the prospective buyer, followed by a construction agreement whereby the appellant would construct a residential unit as per the specifications and conditions in the construction agreement, which stands aloof and excluded from construction of residential complex service.

2.2 It was also submitted that the appellant was a builder and that the builders became liable to Service Tax with effect from 01.07.2010 with the introduction of the Explanation to Section 65(105)(zzzh) of the Finance Act, 1994 and hence, there was no tax liability on the appellant for the period up to 01.07.2010.

2.3 It was also urged that the activities they undertook were in the nature of works contract as it involved the sale of materials also and hence, the same would be taxable under the head 'works contract' service under Section 65(105)(zzzza) *ibid.* and consequently, that they were not liable to pay Service Tax under the category of construction of residential complex service.

3.1 In the impugned order, the First Appellate Authority has recorded a finding at paragraph 12, as under: -

> *"12. The appellant argues that the contracts were in the nature of 'works contract' involving sale of material and service. It is seen from the records of the case that the adjudicating authority has not made any finding on the above argument of the appellants regarding 'works contract'. The appellant had also made no observation in the grounds of appeal as to whether any material evidencing sale of goods was submitted to the adjudicating authority for examination enabling him to decide whether the contracts were in the nature of 'works contract' as claimed by the appellants. It is only the submission of documents evidencing sale of materials by the appellants that would win the case for appellants to classify the contracts as works contract and not a*

> *mere claim that the contracts are in the nature of 'works contract'. In the absence of details regarding submission of documents, as outlined above, the appellants cannot claim their contracts come within the category of 'works contract service'."*

3.2 The effect of the above is that neither of the lower authorities had an occasion to give a finding as to whether the scope of the service rendered by the appellant would fall under works contract service and obviously, the above is for want of supporting documentary evidences.

3.3 Before us also, we find that the appellant has only taken the ground that the scope of their activity was covered under the definition of 'works contract' service as they had rendered construction service apart from selling materials used for the construction.

4. We are unable to appreciate the approach of the appellant since they have not only failed in furnishing supporting documents along with their defence before the Original Authority, but also failed to do so even when they filed their first appeal before the First Appellate Authority. When the facts are not properly placed on record before the respective authorities along with supporting documents thereto, the authorities will not be able to arrive at a proper conclusion, which only results in multiple litigations like the one in the case on hand, and the same could be avoided by proper response by the taxpayer.

5. In view of the above discussions, and especially when no finding is given on the arguments of the appellant regarding works contract, we are not in a position to accept the mere contentions of the appellant, which are also not supported by any documentary evidences. We, therefore, deem it proper to set aside the impugned order and remit the same to the file of the Adjudicating Authority, before whom the appellant shall first establish the fact that what

it undertook was works contract service. It is for them to thereafter submit all supporting case-law before the Adjudicating Authority in order to enable him to give a proper finding on the facts. The Adjudicating Authority shall give reasonable opportunities to the appellant before passing a speaking *de novo* adjudication order; all the contentions are left open.

(Order pronounced in the open court on **31.03.2023**)

Sd/-	Sd/-
(VASA SESHAGIRI RAO)	**(P. DINESHA)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

Sdd