IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL

CHENNAI

REGIONAL BENCH - COURT No.I

Service Tax Appeal No.577 of 2012

(Arising out of Order-in-Original No.61/2012 dated 30.03.2012 passed by the Commissioner of Service Tax, M H U Complex, Nandanam, Chennai 600 035)

Sree Rosh Properties Pvt Ltd. **...Appellant**
New No.23, Lakshmi Street,
Kilpauk, Chennai 600 010
Tamil Nadu

VERSUS

Commissioner of Central Excise & Service Tax **... Respondent**
No.26/1, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034

APPEARANCE:

Ms. Radhika Chandrasekhar, Advocate
For the Appellant

Mr. M. Ambe, Deputy Commissioner,
For the Respondent

CORAM :

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

FINAL ORDER No.40217/2024

DATE OF HEARING : 26.02.2024

DATE OF DECISION : 01.03.2024

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

1. The period of dispute in this appeal is from October 2008 to June 2010.

2. It is the case of the revenue that during the course of audit of accounts of the assessee / appellant, they appear to have noticed that the appellant had discharged service tax till September 2008 for the services rendered under Construction of Residential Complex Service (CRCS for short) and Work Contract Service (WCS); upon enquiry the appellant appears to have informed that their customers did not pay service tax and hence, the same was not paid from October 2008 onwards.

3. The above resulted in the issuance of a Show Cause Notice dated 13.01.2011 wherein, the issuing authority namely the Commissioner of service tax having noticed the various projects undertaken by the appellant and various agreements entered into by the appellant with land owner/s in some cases and joint venture/development agreements in some, entertained a doubt that from the nature of work undertaken by them they were liable to pay service tax under Commercial or Industrial Construction Service (CICS) and in respect of

projects commenced after 01.06.2007, tax to be paid under WCS, *inter alia* proposed to recover the service tax along with interest at appropriate rate as applicable, apart from penalty under Sections 76 and 78 ibid.

4. It appears that the appellant filed a written reply thereby denying tax liability and it also appears that the appellant seriously contested the invocation of extended period of limitation. On merits the appellant had urged that they were only the developer and hence, any service provided by them prior to 01.07.2010 would not attract the service tax as proposed.

5. The Adjudicating Authority having considered the explanation of the appellant during adjudication, however, proceeded to confirm the demands as proposed in the Show Cause Notice vide Order in Original No.61/2012 dated 30.03.2012 and it is against this order that the present appeal has been preferred by the appellant before this forum.

6. Smt. Radhika Chandrasekhar, Ld. Advocate appearing for the appellant would contend at the outset that the demand of Service Tax against the appellant is against the settled position of law as interpreted by various Benches of CESTAT following the decision of Hon'ble Apex court in Commissioner of C. Ex. & Cus., Kerala Vs. M/s. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (SC)]. She would further submit that the period of dispute is October 2008 to June 2010 which is prior to the introduction of explanation to Section 65 (105) (ZZZH) in the Finance Act 2010, whereby the liability has been fastened *inter alia* on the builder. In this regard, she has also relied on the following judgements / orders of various judicial fora:

i. M/s. Jain Housing & Construction Limited - Final Order Nos.40077-40079/23 dated 24.02.2023

ii. Commissioner of Service Tax Vs M/s. Jain Housing and Construction Limited -Civil Appeal Diary No.31457/2023

iii. Krishna Homes Vs. Commissioner of Central Excise Bhopal – 2014 (34) S.T.R. 881 9 (Tri. Delhi)

iv. Commissioner of Customs C. Excise and ST, Vishakapattinam – I Vs. Pragathi Ediffice Pvt. Ltd. – Final Order No.A/31010-31011/2019 dated 18.09.2019

v. M/s. South India Shelters Pvt Ltd Vs. Commissioner of Central Excise- Final Order No. 40123-40124/2023, dated 07.03.2023

vi. M/s. Srinivasa Shipping and Property developers Ltd. Vs. Commissioner of GST and Central Excise- Final Order No.41107-41108/2023 dated 08.12.2023

vii. M/s. URC Construction Pvt. Ltd Vs. Commissioner of Central Excise, Salem – 2017 (50) STR 147 (Tri-Chennai)

viii. M/s. Casa Grande Private Limited Vs. The Commissioner of Service Tax – Final Order No.40255/2023 dated 06.04.2023

ix. M/s. Hindustan Steel Works Construction Ltd. Vs. Commr. Of CST 2019 (26) GSTL 45 (Tri. Hyd)

x. M/s. Indus Engg and Construction Co Vs. Commr. Of C. Ex and Nagpur – 2015 (40) STR 737 (Tri – Mum).

7. Per contra Shri M. Ambe, the Ld. Deputy Commissioner, defended the order of the Original Authority. He also took us through specific paragraphs of the impugned order, to contend that the demand has been correctly made. He would also rely on an order of this Bench in the case of ***"LCS City Makers Pvt. Ltd. Vs. Commissioner of Service Tax, Chennai" 2013 (30) S.T.R. 33) Tri – Chennai.***

8. Having heard the rival contentions, we find that the only issue to be decided by us is, "whether on the facts of the case, for the period under dispute, the demand of service tax on the appellant is correct?"

9. We have carefully gone through the Show Cause Notice as well as the impugned order. We find that undisputedly the service rendered by the appellant is clearly in the nature of works contract since in respect of all the projects undertaken by it, the agreements itself clearly specify that it was for the developer to use standard materials for construction. Further, the Revenue has not at all disputed that the appellant was only a builder and hence, it is clear that the appellant, as a builder/developer had provided the work contract services and the period involved is prior to 01.07.2010, which is before the introduction of explanation to Section 65 (105) (ZZZH) vide Finance Act, 2010.

10. In this regard, we have the benefit of the order of principal Bench of CESTAT, New Delhi in the case of Krishna House (Supra) wherein, the Ld. Bench has examined the effect of introduction of the above explanation to Section 65 (105) (ZZZH) ibid, wherein it has been clarified that no Service Tax could be levied prior to 01.07.2010 under CRCS for which reference has also been

made to the clarification issued by CBSE in Circular No.108/2/2009 – Service Tax dated 29.01.2009. Further, the question as to whether the above would apply to cases where the services were rendered as WCS was also examined and answered in affirmative in the above case as well, by the Ld. Bench, by following the decision of the Apex Court in the case of M/s. L & T Ltd. and others Vs. State of Karnataka and others, reported in 2014 (24 STR 481 SC).

11. We also find that the ratio of the other decisions / Orders of the cases relied upon by the Ld. Advocate are more or less similar to the ratio laid down in the above cases. In view of the decision of the Hon'ble Apex Court, we do not find it appropriate to examine the applicability or otherwise of the order of Chennai Bench in the case of NCS City (supra) relied upon by the Ld. Deputy Commissioner.

12. In view of our discussion above, we are of the clear view that the demand raised against the appellant lacks merit and hence, the impugned order cannot sustain.

Resultantly, we set aside the impugned order and allow the appeal with consequential benefit if any, as per law.

(Pronounced in court on **01.03.2024**)

(**M. AJIT KUMAR)**	**(P. DINESHA)**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)

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