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

Appeal No. ST/440 to 442/2012

(Arising out of Order-in-Appeal Nos. 45 to 47/2012 dated 29.3.2012 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Bismi Engineering Contractors
M/s. Arasan Amutham Constructions
M/s. Chendur Construction Company Appellants

Vs.

Commissioner of GST & Central Excise
Madurai Respondent

Appearance

Ms. D.S.Vipula, Advocate for the Appellants
Shri S. Govindarajan, AC (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: **30.01.2019**

Final Order Nos. **40195-40197 / 2019**

Per Bench

All these appeals involve identical issue and hence they are taken up together for disposal.

2. The common facts in all these appeals are that the appellants were engaged by Tamil Nadu Police Housing Corporation Ltd. (TNPHCL) for construction of Police quarters. Department took the view that the activity would come under the ambit of Construction of Complex Service and hence the value of taxable services could be exigible to service tax

liability. Accordingly three show cause notices were issued proposing to demand service tax along with interest and penalty which culminated in adjudication orders upholding the demands along with interest and imposition of penalties under sections 76 and 77 of the Finance Act, 1994. Aggrieved the appellants filed appeals before Commissioner (Appeals), who upheld the adjudication orders. The details of which as provided by ld. counsel is as under:-

Name of the Assessee	SCN No. & Date	Order-in-Original No.	Service Tax Demand
Bismi Engineering Contractors	48/2010-ST dated 19.10.2010	No. 043-11/ dated 31.10.2011	Rs.21,62,590/-
Chendur Construction Company	50/2010-ST dated 19.10.2010	No. 0436-11/ dated 31.10.2011	Rs.42,50,834/-
Arasan Amuthan Construction	173/2010-ST dated 23.11.2010	No. 172-11/ dated 5.12.2011	Rs.13,03,444/-

3. Today, when the matter came up for hearing, ld. counsel Ms. D.S. Vipula submitted that the issue is no longer res integra. She relies upon the judgment of the Tribunal in Nithesh Estates Ltd. which was affirmed by the Hon'ble High Court of Karnataka as reported in 2018 (17) GSTL 414 (Kar.). She further submits that the Tribunal in Sima Engg. Constructions Vs. Commissioner of Central Excise, Trichy – 2011 (21) STR 179 (Tri. Chennai) has adopted the same ratio. Ld. counsel further submits that the show cause notices were issued under Construction of Complex Service. The works undertaken by the appellant herein being composite in nature they would be

required to be categorized as Works Contract Service. She places reliance on the judgment of the Hon'ble Supreme Court in the case of Larsen & Toubro Ltd. – 2015 (39) STR 13 (SC) and on the decision of the Tribunal in the case of Real Value Promoters Ltd. Vs. CCE – 2018-TIOL-2867-CESTAT, Chennai, to contend that for the periods prior or after 1.6.2007, composite contracts will require to be categorized only under Works Contract Service.

4. On the other hand, ld. AR Shri S. Govindarajan supports the impugned order.

5. Heard both sides.

6. We find that the ld. counsel is correct in her assertions that the issue in dispute is settled by the case laws relied upon by her. This very Bench in Siva Engineering Constructions (supra) held that the construction of such quarters for Police, personal etc. would fall within the exclusion category and would not be exigible to service. In the circumstances, the impugned order to the contrary cannot survive and will have to be set aside which we hereby do. The appeals are therefore allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

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

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