CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Service Tax Appeal Nos.00448 to 00450 of 2012

(Arising out of Order-in-Original Nos.13, 14 & 15/2012, dated 29.03.2012 passed by the Commissioner of Central Excise, Chennai)

M/s. Jain Housing, **: Appellant**
No.11, Somasundaram Street,
T. Nagar,
Chennai – 600 017.

VERSUS

Commissioner of Service Tax, **: Respondent**
Service Tax Commissionerate,
No.692, MHU Complex,
Nandanam,
Chennai – 600 015.

APPEARANCE:

Ms. Radhika Chandrasekhar, Advocate for the Appellant

Ms. Sridevi T, Authorized Representative for the Respondent

CORAM:

HON'BLE SMT. SULEKHA BEEVI C.S, MEMBER (JUDICIAL)
HON'BLE SHRI P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NOs. 41564-41566 / 2019

DATE OF HEARING: 20.11.2019

DATE OF DECISION: 20.11.2019

Per Smt. Sulekha Beevi C.S:

The appellants, who are engaged in construction of residential complexes were issued show-cause notice for the period 01.04.2006 to 30.09.2008, Oct.'08 to Sept.'09 and Oct.'09 to Jun.'10, alleging short-payment of service tax. They were discharging service tax under Construction of Residential Complex Service, prior to 01.06.2007. After such date, the appellants registered under Works

Contract Services and started paying service tax under this category of service. The department was of the view that they cannot change the classification and ought to have discharged service tax under Construction of Residential Complex Service itself for which show-cause notice was issued. After due process of law, the original authority confirmed the demand, interest and also imposed penalties. Hence this appeal.

2. On behalf of the appellant, the learned counsel Ms. Radhika Chandrasekhar submitted that the appellant was engaged in construction of residential complexes to customers. They entered into agreement with the customers for sale of the undivided share of the land and also entered into agreement for construction of flats. The construction activities are composite in nature as it involves both supply of materials and rendering of services. The Tribunal in the case of *M/s. Real Value Promoters* has held that prior to 2012, the demand in the case of composite contracts would sustain only under the category of Works Contract Services. She prayed to set aside the demand raised under Construction of Residential Complex Services.

2. The learned Authorised Representative for the Revenue Ms. Sridevi T, JC (AR) supported the findings in the impugned order.

3. Heard both sides.

4. After perusal of records, we find that the contracts are composite in nature involving both supply of materials as well as rendering of services. For the period prior to 01.06.2007, the demand raised under Construction of Residential Complex Service cannot sustain for such composite contracts as held by the Hon'ble Supreme Court in the case of *Commissioner of Central Excise & Customs, Kerala Vs M/s. Larsen & Toubro Ltd.,* reported in *2018 (39) S.T.R.913 (S.C.)*. After 01.06.2007, the department has taken a view that the contracts would fall only under Construction of Residential Complex Service. The demand is raised under this category, even though, the appellant has been discharging service tax under Works Contract Service. In Real Value Promoters vide Final Order Nos.43436-42438/2018, dated 18.09.2018, the Tribunal has held that in respect of composite contract, the service tax can be demanded

only under Works Contract Scheme, after 01.06.2007. Following the decisions cited above, we are of the considered opinion that the demand cannot sustain under Construction of Residential Complex Service. The impugned orders are set aside. Appeals are allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

ksr
21-11-2019

	DRAFT			Remarks
	I	II	III	
Date of dictation	**20.11.2019**			
Draft Order - Date of typing	**21.11.2019**			
Fair Order Typing	**21.11.2019**			
Date of numbering and date of dispatch	**25.11.2019**			