

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHENNAI**

REGIONAL BENCH - COURT No. III

Service Tax Appeal No. 41409 OF 2013

(Arising out of Order-in-Appeal No.CMB-CEX-000-APP-091-13 dated 19.03.2013 passed by Customs, Central Excise & Service Tax (Appeals), 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018)

M/s.Springfield Shelters P. Ltd.

.... Appellant

No.101, Rangavilas,
New Damu Nagar,
Coimbatore 641 037.

VERSUS

**The Commissioner of GST &
Central Excise,**

... Respondent

6/7, A.T.D. Street, Race Course Road,,
Coimbatore 641 018.

WITH

Service Tax Appeal No. 42113 OF 2013

(Arising out of Order-in-Appeal No.CMB-CEX-000-APP-240-13 dated 07.08.2013 passed by Customs, Central Excise & Service Tax (Appeals), 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018)

M/s.Springfield Shelters Pvt. Ltd.

.... Appellant

No.101, Rangavilas,
New Damu Nagar,
Coimbatore 641 037.

VERSUS

**The Commissioner of GST &
Central Excise,**

... Respondent

6/7, A.T.D. Street, Race Course Road,,
Coimbatore 641 018.

Service Tax Appeal No. 41409 of 2013
Service Tax Appeal No.42113 of 2013
Service Tax Appeal No.41701 of 2014

AND

Service Tax Appeal No. 41701 OF 2014

(Arising out of Order-in-Appeal No.CMB-CEX-000-APP-072-14 dated 06.06.2014 passed by Customs, Central Excise & Service Tax (Appeals), 6/7, A.T.D. Street, Race Course Road, Coimbatore 641 018)

M/s.Springfield Shelters P. Ltd.

.... Appellant

No.101, Rangavilas,
New Damu Nagar,
Coimbatore 641 037.

VERSUS

**The Commissioner of GST &
Central Excise,**

... Respondent

6/7, A.T.D. Street, Race Course Road,,
Coimbatore 641 018.

APPEARANCE :

Shri M.N. Bharathi, Advocate for the Appellant
Shri N. Satyanarayana, Authorized Representative
for the Respondent

CORAM :

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

FINAL ORDER No.40286-40288/2025

DATE OF HEARING : 23.12.2024
DATE OF DECISION : 28.02.2025

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Per: Shri P. Dinesha

These appeals arise against different Orders-in-Appeals passed by Commissioner (Appeals), Coimbatore but however, since the issue is common in all these appeals, the same are considered for common disposal.

2. The details of period of dispute involved in the appeals, Orders-in-Original and the impugned Orders-in-Appeals are tabulated herein below :

S.No	Appeal No.	Period of Dispute	Order-in-Original No. by the Adjudicating Authority	Impugned Order in Appeal By the First Appellate Authority
1.	ST/41409/2013	January 2010 to March 2010	24/2012 dated. 17.05.2012	091/2013 dt. 19.03.2013
2.	ST/42113/2013	April 2010 to March 2011	05/2013/ST (ST-ADC) dated 16.03.2013	240/2013 dt. 07.08.2013
3.	ST/41701/2013	April 2011 to June 2012	14/2013-AC dt. dated 20.02.2014	072/2014 dt. 06.06.2014

3. Heard Shri M.N. Bharathi, Ld. Advocate for the Appellant and Shri N. Satynarayana, Ld. Assistant Commissioner for the Respondent.

4. The common issue to be decided in these appeals is, "whether the demand of service tax under "Works Contracts Service" (WCS) as upheld in the impugned orders is justifiable ?"

5. The brief facts as could gathered from the documents placed on record including orders of lower authorities, are that the appellant was providing services under 'Construction of Residential Complex Service (CRCS). Revenue appeared to have noticed that for the period January 2010-March 2010, April 2010-March 2011 and April 2011-June 2012 the appellant had filed its return under the category of WCS instead of CRCS (under which the appellant was registered) and as a follow up action there was some exchange of communication between the Revenue and the appellant and thereafter, it appears that 3 show cause notices covering the above periods, separately, came to be issued proposing to recover applicable tax along with interest at the appropriate rate under Section 75 apart from penalties under section 76 & 77 of the Finance Act, 1994. It appears that the appellant filed its reply denying any further tax liability since they had claimed to have remitted the service tax under CRCS. However, the Adjudicating Authority not satisfied with the explanation, confirmed the proposed demands vide the separate Orders-in-Original as reflected in table at para-2 above. Aggrieved by the said demands, it appears that the appellant filed appeals before the First Appellate Authority and, even the First Appellate Authority having rejected their appeals vide the separate Orders-in-Appeals as tabulated above, the present appeals have been filed before us.

6. It is contended by the Ld. Advocate, at the outset, that the present demands in these appeals would not survive since the very same issue has been considered and decided in their favour, following the decision of Hon'ble Supreme Court in the case of **CCE & CC Kerala Vs Larsen & Toubro Ltd.** – 2015

(39) STR 913 (SC), by this very Bench in the case of **Hirarandani Realtors Pvt. Ltd. Vs CGST & Central Excise, Chennai** - 2024 (11) TMI 348 CESTAT CHENNAI and he would request for setting aside the demands confirmed in the impugned orders.

7. *Per contra*, the Ld. Assistant Commissioner Shri N. Satyanarayanan relied upon the findings of the authorities below. In the order of **Hirarandani Realtors Pvt. Ltd. Vs CGST & Central Excise, Chennai** (*supra*) this Bench has referred to an order of coordinate Bench in the case of **M/s.Pragati Edifice Pvt. Ltd.** wherein the Bench, following the decision of **Larsen & Toubro Ltd.** (*supra*) has held as under :

“5.We have gone through the various judicial precedents relied upon during the course of arguments and we find the assertion of learned Advocate is correct in as much as various Benches of CESTAT have taken a consistent view that the service tax was not leviable on a developer prior to 1.7.2010, by following the decision of the Hon’ble Apex Court in the case of *CCE & CC Kerala Vs Larsen & Toubro Ltd.* (*supra*). In one of the recent orders in the case of *M/s.Casa Grande Private Ltd. Vs CST Chennai* vide Final Order No.40255/2023 dated 06.04.2023, this Bench has referred some of the orders of CESTAT Benches and held as under :-

“10. We find that the Order of the co-ordinate Hyderabad Bench of the CESTAT in the case of *M/s. Pragati Edifice Pvt. Ltd.* (*supra*) is a more recent one, which has considered many orders of other co-ordinate Benches and also the decision of the Hon’ble Apex Court in the case of *Commissioner of Central Excise and Customs, Kerala v. M/s. Larsen & Toubro Ltd.* [2015 (39) S.T.R. 913 (S.C.)], and has opined as under: -

“(n) *To sum up, as far as construction of ‘residential complexes’ by the builders are concerned :*

(i) *Prior to 1-6-2007, if it is a composite works contract, no Service Tax is leviable in view of the judgment of the Hon’ble Apex Court in the case of Larsen & Toubro (supra).*

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(ii) *After 1-6-2007, it is chargeable as 'works contract' only if it is a composite contract and under 'construction of complex services' if it is a service simpliciter.*

(iii) *However, after 1-6-2007 but prior to 1-7-2010, whether it is a service simpliciter or a works contract, if the service is rendered prior to issue of completion certificate and transfer to the customer, it is not taxable being in the nature of self service.*

(iv) *Further, whenever the service is rendered for completion or construction of a flat for personal use of the service recipient, no Service Tax is payable in view of the exclusion in the definition of residential complex service.*

(v) *After 1-7-2010, Service Tax is chargeable under the head of 'construction of complex services' if it is service simpliciter and under 'works contract service' if it is a composite works contract.*

*(o) In view of the above, it is well settled legal position that **whether the service is rendered as service simpliciter or as a works contract, no Service Tax can be levied on construction of residential complex prior to 1-7-2010.** Learned Counsel would submit that for the period post 1-7-2010, they have been discharging Service Tax appropriately. This is a fact which can be verified to ascertain the full tax liability for the period post 1-7-2010 or otherwise."*

(Emphasis supplied by us, in bold, for clarity)

11.1 We have gone through the orders of the various CESTAT Benches which have been considered by the Hyderabad Bench of the CESTAT in M/s. Pragati Edifice Pvt. Ltd. (supra), the relevant observation of which has been extracted hereinabove. We find that it has been categorically held that no Service Tax could be levied on construction of residential complexes prior to 01.07.2010 even when the service is rendered either as service simpliciter or as a works contract.

11.2 Evidently, in the case on hand, the period of dispute is up to September 2010 and hence, in view of the above, the liability to Service Tax, if any, is restricted to the period post 01.07.2010."

6. In view of the above, we do not find any justification for levy of service tax on the appellant / developer for the period prior to 1.7.2010 and hence, the impugned order cannot sustain.

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

8. From the above, it is clear that upto 1.7.2010, the classification of service would remain the same as declared by the service provider but however, post-1.7.2010 the tax would be chargeable under ‘Construction of Complex Service’ if it is service simpliciter and under ‘Works Contract Service’ if it is a composite works contract. From the discussions in the respective Orders-in-Original, there is no dispute that (i) the nature of work was under composite contract and (ii) in respect of ongoing projects commenced prior to 1.6.2007 for which the appellant had already remitted the service tax under SCS, though no service tax in respect of a composite contract was leviable in view of decision in **L&T Ltd.** (*supra*). In any case, it is an admitted fact on record that during the periods under dispute, the appellant continued to remit the service tax under WCS and hence there was no reason for the Revenue not to accept the same. Hence we are of the view that in the light of decision of **Larsen & Toubro Ltd.** (*supra*), which has been followed by various Benches of Tribunal across India, the liability as under CRCS cannot sustain. For this reason, we set aside the demands in the impugned orders and since the issue of interpretation was involved, there cannot be any scope of to allege suppression or whatsoever and hence no penalty could be exigible and hence demand and penalties are set aside.

9. In respect of Appeal **ST/41701/2014** for the period April 2011-June 2012, it is observed by the Adjudicating Authority that the appellant did not pay service for the receipts

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either under CRCS or under WCS. If is so, then nothing stops Revenue from collecting applicable admitted tax liability under WCS along with interest, which is consistently admitted by the appellants.

The appeals stand disposed as indicated above.

(Order pronounced in the open court on 28.02.2025)

sd/-

(VASA SESHAGIRI RAO)
Member (Technical)

sd/-

(P. DINESHA)
Member (Judicial)

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