CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Service Tax Appeal No. 50412 of 2014

(Arising out of Order-in-appeal No. 132 (VC) ST/JPR-I/ 2013 dated 30.8.2013/13.9.13 passed by the Commissioner (Appeals) Central Excise & Customs, Jaipur-I).

Gordhan Lal Contractor **Appellant**
House No. 161, Sector-1
Sangaria, Distt- Hanumangarh.

VERSUS

Commissioner of Central Excise and Service Tax, **Respondent**
NCR Building, Statue Circle
C-Scheme, Jaipur. (Rajasthan)

APPEARANCE:

Shri Krishna Kumar R.S., Advocate for the appellant
Shri A. Thapliyal, Authorised Representative for the respondent

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. C. L. MAHAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 51612/2019

DATE OF HEARING/DECISION: 17.07.2019

ANIL CHOUDHARY:

Heard the parties.

2. The period under dispute is prior to 01.06.2007 when, works contract service was introduced under the provisions of Finance Act, 1994, as the taxable service providing for levy of service tax on composite contract involving use of material by the contractor / service provider. From the facts on record, we find that service tax

has been demanded under the category of 'Commercial and Industrial Construction Service' (CICS) for the period October, 2005 to March, 2007.

3. The Hon'ble Supreme Court in the case of **Larson & Toubro Limited -** 2015 (39) STR 913 have held that even for the period prior to 01.06.2007 wherever the work done by a service provider involves the usage of material in a case of composite contract, such work is classifiable only under the classification – works contract. It has been further clarified by the Hon'ble Supreme Court that prior to 01.06.2007, only pure service contracts can be subjected to service tax under the existing classification of CICS, etc.

4. We find that the Commissioner (Appeals) decided the appeal/ order, prior to law pronounced by the Hon'ble Supreme Court, decision in August 2015 in the case of Larson & Toubro Limited (supra). In this view of the matter, we find that the levy of service tax is not tenable under the category of CICS, as the service is clearly classifiable under the category of 'Works Contract Service'. Accordingly, we allow the appeal and set aside the impugned order. The appellant is entitled to consequential benefit, in accordance with law.

(Dictated and pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

(**C.L. Mahar**)
Member (Technical)

Pant