**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL**
**West Block No. 2, R.K. Puram, New Delhi – 110 066.**
**Principal Bench, New Delhi**

**COURT NO. III**

**DATE OF HEARING : 06/03/2017.**
**DATE OF DECISION : 06/03/2017.**

**Service Tax Appeal No. 146 of 2012**

[Arising out of the Order-in-Appeal No. IND/CEX/000/APP/370/2011 dated 28/09/2011 passed by The Commissioner of Customs, Central Excise & Service Tax (Appeals – I), Indore.]

M/s Raj Ratan Electric Stores Appellant

Versus

CCE, Indore Respondent

**Appearance**

Shri A.K. Batra, C.A. and Ms. Vibha Narang, Advocate – for the appellant.

Shri Ranjan Khanna, Authorized Representative (DR) – for the Respondent.

CORAM: **Hon'ble Shri S.K. Mohanty, Member (Judicial)**
**Hon'ble Shri B. Ravichandran, Member (Technical)**

Final Order No. 52220/2017 Dated : 06/03/2017

**Per. B. Ravichandran :-**

The appeal is against order dated 28/09/2011 of Commissioner (Appeals – I), Indore. The appellants are engaged in rendering service to Ratlam Division of Indian Railways. They were engaged in providing services of supply, erection, testing and commissioning of submersible pump sets and capacitors tanks. The service tax liability on the appellant was confirmed by the lower authorities for the period 2003-2004 to 2005-2006 under the category of "erection and commissioning service" on the total gross value of the contracts. No abatement under any notification has been allowed, to discharge the service tax liability.

2. The learned Consultant appearing for the appellant submitted that the contracts executed by them are composite in nature, involving supply of materials and this fact has been admitted in the proceedings before the lower authorities. Such composite work contracts are liable to service tax only w.e.f. 01/06/2007, after the introduction of new service tax entry under the heading "works contract service". Prior to that date, such composite works contract are not liable to service tax as held by the Hon'ble Supreme Court in **CCE & CUS, Kerala vs. Larsen & Toubro Ltd.** reported in **2015 (39) S.T.R. 913 (S.C.)**. In view of the above settled legal position, it is prayed that the impugned order is not legally sustainable.

3. We have heard both the sides and perused the appeal records. The fact that the contracts in the present case are all for both supply of goods as well as rendering of service has not been disputed. We have also perused sample work orders. The contracts are for supply of pumps, capacitors tanks etc. alongwith their erection, testing and commissioning. This composite works contract are liable to service tax under "works

contract service” w.e.f. 01/06/2007 as held by the Hon’ble Supreme Court in **Larsen & Toubro Ltd.** (supra).

4. In view of the above settled position applicable to the present facts, we find the impugned order as unsustainable accordingly the same is set aside. The appeal is allowed with consequential relief.

(Order dictated and pronounced in open court.)

**(S.K. Mohanty)**
**Member (Judicial)**

**(B. Ravichandran)**
**Member (Technical)**

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