CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Service Tax Appeal Nos. 60218 & 60516 of 2013

(Arising out of Order-in-Original No. 27/2013(ST)-COM/2013 dated 30.05.2013 passed by the Commissioner of Central Excise (Appeals), Jaipur-I**)**

DATE OF HEARING : 04.12.2017
DATE OF DECISION : 04.12.2017

M/s Rib Engineer & Construction Co. …. **Appellants**
(Rep by Ms. Rinky Arora, Adv.)

VERSUS

CCE, Jaipur-I …. **Respondent**
(Rep. by Sh Sanjay Jain, DR)

CORAM : HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE MR. B. RAVICHANDRAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 58321-58322/2017

PER JUSTICE (Dr.) SATISH CHANDRA :

Both the present appeals are filed by the assessee-Appellants against the Order-in-Original No. 27/2013(ST)-COM/2013 dated 30.05.2013 passed by the Commissioner of Central Excise (Appeals), Jaipur-I. The period in dispute is October 2005 to March 2010.

2. Heard Ms. Rainky Arora, learned counsel for the assessee-Appellants and Shri Sanjay Jain, learned DR for the Department.

3. After hearing both sides and on perusal of the material available on record, we find that an identical issue has come up for consideration before the Tribunal in the case of **Kumawat Contractor vs CCE, Jaipur,** Final Order No. 53947/2017 dated 06.06.2017, wherein it was observed that :

> **"3. We note that the contracts executed by the appellants in relation to construction of residential complex were subjected to service tax under "construction of complex service" prior to 01.06.2007 and under "works contract services" after 01.06.2007. Admittedly, these contracts are of composite nature, involving supply of materials as well as provision of service. In terms of the decision of Hon'ble Supreme Court in the case of Larsen and Tubro Ltd.-2015 (39) S.T.R. 913 (S.C.) such composite contracts are liable to service tax only w.e.f. ST/56691/2013-ST [DB] 3 01.06.2007, under the category of "works contract services". Further, we also note that the original authority confirmed the service tax liability under residential complex service/ works contract service on the ground that the appellants constructed residential units having common area and facility in the colony, in terms of agreement with Rajasthan Housing Board. This aspect is being contested by the appellant. A perusal of the impugned order indicates that the original authority examined the general scope of the terms "Residential Complex" and inferred that generally housing colonies**

built by State Housing Boards will have large common area, common approach, water supply, park, community centre and any other common facilities. We find that the original authority also distinguished the decision of the Tribunal in Macro Marvel Projects Ltd. – 2008 (12) S.T.R 603 (Tri. – Chennai). The observation of the original authority is that when there are common facilities, the appellants are liable to tax even for individual houses. We find that the factual details relevant to the present case has not been brought out with supporting evidence. Without inferring the fact regarding applicability of the tax entry in the present case, it is necessary to examine as to whether the residential complex, having individual houses, is in fact, having common areas as mentioned in the statutory definition. This can be verified from the approved layout and other supporting documents. In the absence of specific finding in this regard, it will not be correct to conclude on a particular tax entry.

4. In view of the above discussion and analysis, we find that the impugned order as it stands with reference to tax liability of the appellant for construction of residential complex, is not sustainable. Accordingly, that portion of the finding is set aside and the matter is remanded back to the original authority for a fresh decision, keeping in view the law laid down in the Hon'ble Supreme Court in the case of Larsen and Trubro Ltd. (supra) as well as regarding factual details for construction of residential complex with specific reference to availability of common facilities within the approved layout, in terms of statutory definition to the work executed by the appellant. The appellant shall be provided adequate opportunity to place their side of the case, before a fresh decision is taken by the original authority. The appeal is allowed to this extent, by way of remand."

4. By following our earlier order (supra), we set aside the impugned order and remand the matter to the adjudicating authority with the similar directions (supra).

5. In the result, both the appeals filed by the assessee-Appellants are allowed by way of remand.

(Dictated & pronounced in the open court)

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(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

(JUSTICE (Dr.) SATISH CHANDRA)
PRESIDENT

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