IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. I

Service Tax Appeal No. 50562 of 2014

[Arising out of Order-in-Appeal No. 212 (RDN) ST/JPR-I/2012 dated 24.9.2012 passed by the Commissioner of Central Excise (Appeals), Jaipur]

M/s. D R Builderstate Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise **Respondent**
Jaipur

Appearance:
Shri A K Batra, CA, Advocate for the Appellants
Shri G R Singh, DR for the Respondent

CORAM:
Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B Ravichandran, Member (Technical)

Date of Hearing /Decision: 18.1.2018

FINAL ORDER NO. 50578/2018

Per: B Ravichandaran:

The appellant is engaged in civil construction activity and has undertaken construction of commercial mall in pursuance of Letter of intent dated 13.7.06 for M/s. Aereness Gold Souk. The present proceedings are with reference to Service Tax liability for such construction. The Revenue held a view that the appellants have to discharge the tax under industrial and commercial construction service on the full value (including the value of material received free from the recipient of service) during the period 1.9.2006 to 31.3.2008. The lower authorities confirmed such Service Tax liability amounting to Rs.46,68,210/-.

2. We have heard both the sides and perused the appeal record. Learned Counsel submitted that the contract is composite in nature involving supply of goods as well as provision of service. In terms of decision of Hon'ble Supreme Court order, in the case of ***Larsen and Toubro Ltd. [2015 (39) STR 913 (SC)],*** composite works contract is liable to service tax only with effect from 1.6.2007. The appellants did register under works contract service and discharged the Service Tax availing composition scheme in terms of Works Contract Rules, 2007. We have examined the impugned order which holds that the appellants are liable to Service Tax under CICS. Abatement in taxable value has been provided by lower authorities in terms of Notification No. 1/2006 ST dated 1.3.06.

3. We have perused a Letter of intent which is subject matter of present dispute. It is clear that the contract is not only for provision of service but also for supply of goods for execution of the said contract. As such, we find that the appellant cannot be subjected to tax prior to 1.7.2007 for the said work.

4. With reference to claim of appellant for non inclusion of value of free supplied material received from the recipient of services, we note that Rule 3(1) of Works Contract (Composition Scheme for Payment of Service Tax) Rule 2007 stipulates that notwithstanding anything contained in section 67 of the Act, 1994 and Rule 2A of Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contact service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying the Service Tax at the rate specified in section 66 of the Act, by paying an amount equivalent to 2% of the gross amount charged for the Works Contract. We note that "term gross amount charged" was subject of interpretation by Larger Bench of the Tribunal in ***Bhayana Builders vs. CST, Delhi [2013 (32) STR 49 (Tri-Del)]*** In the context of Notification 1/2006, the Tribunal held that expression "gross amount charged' is clearly in relation to taxable value computable under section 67. After detailed examination of the statutory provisions of section 67 and the notification, the Tribunal held that the gross amount charged should not include free supplied material received from the recipient of service. In this connection, we rely upon the decision of ***DV Patel & Company vs. CCE, Nagpur [2017 (10) TMI 404-CESTAT-Mum] .*** The Tribunal examined the works contract service with reference to Commercial, Industrial and construction

service and held that the value of free supplied material are not includable in terms of ratio of Larger Bench decision in ***M/s. Bhayana Builders (P)Ltd.*** (supra).

5. In view of the said legal position as discussed above, we find that the tax liability confirmed on the appellant under Commercial Industrial construction service for the period prior to 1.3.2006 is not leviable. The works contract service tax liability has been discharged by the appellant under 2007 Rules. Appeal is accordingly allowed.

(Dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra)	**(B Ravichandaran)**
President	**Member(Technical)**

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