IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –IV

Service Tax Appeal No. ST/50877/2014-ST [DB]

[Arising out of Order-in-Appeal No. 298-299/OPC/CE/JPR-II/2013 dated 21.10.2013 passed by the Commissioner of Central Excise-II Jaipur.]

M/s. Shanti Builders. ...Appellant

Vs.

C.C.E., Jaipur-II. ... Respondent

Present for the Appellant : Mr. O.P. Aggarwal, CA
Present for the Respondent : Mr. Sanjay Jain, DR

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing/Decision: 07.02.2018

FINAL ORDER NO. ____50970____ /2018

PER: S.K. MOHANTY

This appeal is directed against the impugned order dated 21.10.2013 passed by the Commissioner of Central Excise (Appeals), Jaipur.

2. Brief facts of the case are that during the course of scrutiny of the records obtained from Rajasthan Housing Board, Jodhpur, the Service Tax Department observed that various contractors were engaged for construction of residential houses for the said organization. In respect of the present appellant, the Department

found that it had received contract/ construction receipt on account of various construction activities undertaken during the period 20006-2007 to 2009-2010. The Department interpreted that the services provided by the appellant are classifiable under the taxable entry of Construction of Complex Service, defined under Section 65(105)(zzzh) of the Finance Act, 1994. Since the appellant did not pay Service Tax attributable to such taxable service, the Department initiated show cause proceedings against the appellant, seeking confirmation of the Service Tax demand. The Show Cause Notice dated 20.11.2011 issued by the Department was adjudicated vide order dated 04.10.2012, wherein the proposals made therein against the appellant were dropped. The ld. Adjudicating authority has held that construction of individual/independent residential houses constructed for Housing Board will not be taxable under the category of "Construction of Complex" service, defined under Section 65(30a) read with Section 65(91a) and 65(105)(zzzh) of the Finance Act, 1994. For arriving at such conclusion, the ld. Adjudication authority has referred to and relied upon the Final Order No. ST (A)(375)(2012)-Cu dared 20.04.2012, passed by this Tribunal in the case of A.S. Sikarwar. Against the adjudication order dated 04.10.2012, Revenue has filed appeal before the Commissioner (Appeals). The appeal of Revenue was allowed by the Commissioner (Appeals) vide the impugned order, holding that the appellant is liable to pay Service Tax under the category of Residential Complex Service. The decision of this Tribunal in the case of A.S. Sikarwar (supra) relied on by the adjudicating authority has been distinguished by the Commissioner (Appeals). Vide the impugned order, the Commissioner (Appeal) has further held that Construction of Residential Complex Service, though falls under works contract service w.e.f. 01.06.2007, but said service provided by the appellant prior to 01.06.2007 under the category of Residential Complex Service is liable for payment of service tax under such existing taxable service.

3. The ld. Consultant appearing for the appellant submitted that vide the impugned order, the ld. Commissioner (Appeals) has disposed of two appeals, in the case of the appellant and M/s. Jaina Ram Builder & Contractor. Against the said order, M/s. Jaina Ram Builder & Contractor had filed appeal before the Tribunal, which was disposed of vide order dated 28.12.2015, in allowing the appeal in favour of the said appellant. Thus, he submitted that since on identical facts, the impugned order has already been set aside and the appeal was allowed in favour of the Jaina Ram Builder & Contractor, the same stand should also be taken by the Tribunal for allowing the appeal, in case of the present appellant. He further submitted that the construction activities undertaken by the appellant pursuant to the work order issued by the Rajasthan Housing Board, is in the nature of a composite contract, involving both supply of goods and carrying out the construction activities. Thus, he submitted that the services provided by the appellant should be classifiable under Works Contract Service, leviable to Service Tax w.e.f. 01.06.2007 and not under construction of Residential Complex Service, as

held by the Commissioner (Appeals). In this context, the ld. Consultant has relied on the judgment of Hon'ble Supreme Court in the case of Larsen & Toubro Ltd. reported in 2015-TIOL-187-SC. The ld. Consultant also submitted that the show cause notice issued by the Department is barred by limitation of time inasmuch as, the said notice was issued on 20.10.2011, seeking confirmation of the adjudged demand for the period from 2006-07 to 2009-10. He has relied on the decisions of this Tribunal in the case of Anand Construction Work Vs. CCE - 2017-TIOL-642-Trib.-Del. and Bhopal Switchgear Pvt. Ltd Vs. CCE 2017-TIOL-2901-Trib.- Del., to state that the demand cannot be sustained on the ground of limitation.

4. The ld. DR appearing for the Revenue retreated the findings recorded in the impugned order.

5. Heard both sides and examined the case records.

6. we find that the ld. Commissioner (Appeals) has confirmed the Service Tax demand under Residential Complex Service, on the ground that the appellant had constructed more than 12 Residential Units in a complex, having common area, common approach road, water supply, park community center and many other common facilities, which constitute a residential scheme or colony, known by a distinct name or number. However, we find that the ld. Commissioner (Appeals) has not specifically observed with regard approval of the layout of the plan by the competent authority. The appellant has also not produced any documentary evidences to support its claim that the activities provided by it do

not confirm to the taxable service under the head Residential Complex Service. Thus, in absence of proper substantiation by both sides, we are unable to categorically hold regarding taxability of services rendered by the appellant.

7. It is an admitted fact on record that services provided by the appellant falls under the category of works contract service, being composite in nature, leviable to Service Tax only w.e.f. 01.06.2007, as per the judgment of Hon'ble Supreme Court in the case of Larsen & Toubro Ltd. (supra). There were divergent views with regard to taxability of works contract service and matter was finally resolved by the judgment of Hon'ble Supreme Court in the case of Larsen & Toubro Ltd. (Supra). Hence, the allegation cannot be leveled against the appellant that it had indulged into the activities of fraud, collusion, willful, mis-statement etc., with intent to evade payment of Service Tax. Since, the said ingredients mentioned in proviso to Section 73 (1) of the Finance Act, 1994 are absent, the adjudged demand should only be confined to normal period only and the extended period of limitation cannot be invoked for confirmation of the said adjudged demand. In this case, since the period of dispute is from 2006-07 to 2009-10 and the show cause notice was issued on 20.10.2011, the same is clearly barred by limitation of time, having been issued beyond the normal period. In context with limitation period for issuance of show cause notice, this Tribunal, in the case of Anand Construction Work Vs. CCE - 2017-TIOL-642-CESTAT-Delhi has held that invocation of the extended period is legally not

sustainable, when the issue is complex in nature and prone to different interpretations. The relevant paragraph in the said decision is extracted herein below:-

> *"6. Regarding the third point of the demand being partly time barred we find that, admittedly the issue of service tax liability on composite works contract has been a subject matter of large number of litigation and clarifications by the Board. In such situation, alleging fraud, collusion and willful statement on the part of the appellants is not tenable. It is seen that with the introduction works contract service as a separate tax entry w.e.f. 01/06/2007 though the tax liability on works contract was specified by name, even thereafter the dispute continued about vivisecting the contract for valuing tax purpose. The matter was referred to five Member Larger Bench in the Tribunal in the case of Larsen & Toubro Ltd. and the decision was also put to test before the Hon'ble Supreme Court resulting in the final order, stated above. In such circumstances, we find invoking extended period for alleging fraud etc. is not legally sustainable. As such, the service tax liability under works contract service against the appellants shall be restricted to normal period as applicable under Section 73 of the Finance Act, 1994. On the same reasoning, penalties imposed on the appellants are also set aside in terms of Section 80 of the Finance Act, 1994.*

8. In view of above discussion and analysis, we do not find any merits in the impugned order on the ground of limitation. Accordingly, after setting aside the same, we allow the appeal in favour of the appellant.

(Operative Portion pronounced in open court)

(**B. RAVICHANDRAN**) **MEMBER(TECHNICAL)**	(**S. K. MOHANTY**) **MEMBER (JUDICIAL)**

Sakshi

Honourable Members, I welcome you all and summon yu to another year of hard work in the service of the nation. We begin the year on a confident note, having responded