IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

Service Tax Appeal No.50413/2014(DB)

[Arising out of Order-in-Original NO. JaI-EXCS-001-COM-061-13-14 dated 30.09.2013 passed by the Commissioner of Central Excise-I, Jaipur (Rajasthan)].

M/s.K.D. Builders **...Appellant**

Vs.

C.C.E., Jaipur-I **... Respondent**

Present for the Appellant : Shri O.P. Agarwal, CA for the appellant.
Present for the Respondent: Shri Sanjay Jain, DR for the respondent.

Coram: HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. C.L. MAHAR, MEMBER (TECHNICAL)

Date of Hearing/Decision:4.5.2018

Final Order No.52042/2018

<u>PER: S.K. MOHANTY:</u>

The brief facts of the case are that the appellant is engaged in the business of construction of residential houses and other related works like construction of compound wall gate, surface drain, seakage well, etc. for M/s.Rajasthan Housing Board. On scrutiny of records maintained by the appellant, the Service Tax Department observed that activities provided by the appellant should be taxed under "construction of complex service" upto 31.05.2007 and under "works contract service" w.e.f. 1.6.2007. Accordingly, the matter was adjudicated against the appellant, wherein adjudged demands were confirmed.

2. Ld. Consultant appearing for the appellant submits that residential houses constructed by the appellant for Rajasthan Housing Board is a composite contract involved in both supply of materials as well as for execution of the construction. Thus, he submits that as per the judgement of the Hon'ble Supreme Court in the case of **Larsen & Toubro Ltd. – 2015-**

TIOL-187 SC-ST, the service tax demand cannot be confirmed under "construction of complex service" upto the period 31.05.2007. With regard to confirmation of service tax demand w.e.f. 1.6.2007 under "Works Contract Service" ld. Consultant submits that proceedings are barred by limitation of time inasmuch as the period of demand is from 1.6.2007 to 30.09.2010 and the show cause notice was issued on 16.4.2012, which is beyond normal period prescribed under Section 73 of the Finance Act, 1994. Ld. Consultant also submits that there were doubts regarding leviability of service tax on residential units constructed separately and to support such stand, he has relied on the decision of this Tribunal in the case of **A.S. Sikarwar Vs. CCE vide Final Order No.ST/A/375/2012-CU(DB) dated 20.04.2012.** Thus, he contends that since there is no allegation of suppression of mis-statement with intent to evade payment of service tax, the demand should be confined to the normal period and the extended period of limitation cannot be invoked for confirmation of the adjudged demand. He also submits that the extended period of limitation cannot be invoked in the facts and circumstances of the case. Ld. Consultant has relied on the Final Order No.50970/2018 dated 7.2.2018 of the Tribunal's decision in the case of **Shanti Builders Vs. CCE, Jaipur-II** and Final Order No.51641/2018 (DB) dated 27.04.2018 in the case of **Ganesh Narayan Sharma.**

3. On the other hand, ld. DR appearing for the Revenue reiterates the findings of the impugned order.

4. Heard both the sides and perused the case records.

5. We find that the ld. Adjudicating Authority has confirmed service tax demand under construction of complex service upto the period 31.05.2007 and under "Works Contract Service" w.e.f. 1.6.2007. The fact is not under

dispute that the work order issued by the Rajasthan Housing Board for construction of Residential houses by the appellant is a composite contract, which involves both supply of materials and for construction of the houses. Thus, irrespective of the classification of the services, service tax will be leviable under Works Contract Service only w.e.f. 1.6.2007 as per the judgement of the Hon'ble Supreme Court in the case of **Larsen & Toubro Ltd. (supra)**. Thus, categorization of the service under "construction of complex service" in the adjudication order cannot be sustained.

6. With regard to the period from 1.6.2007 to 30.09.2010, we find that the show cause notice was issued beyond the normal period of limitation. In context with leviability of the service tax on construction of residential houses, this Tribunal vide Order dated 20.04.2012 in the case of **A.S. Sikarwar** has held that service tax levy will not apply in cases, where one compound has many buildings, each not having more than 12 residential units. We accept the submission of the ld. Consultant. There were confusion during the relevant time with regard to proper classification of the service. Since the Department has not specifically brought out any evidence showing the classification motive of the appellant, in defrauding the government revenue, we are of the view that the extended period of limitation cannot be invoked for confirmation of the adjudged demand and the demand should be confined to the normal period. We find that in identical facts and circumstances of the case, this Tribunal in the case of **Shanti Builders (supra)** and **Ganesh Narayan Sharma (supra)** has dropped the demand raised beyond the normal period of limitation.

7. In view of the above, we set aside the impugned order to the extent it confirms service tax demand beyond the normal period of limitation. The matter is remanded to the Original Authority for quantification of the service

tax demand, which should be payable by the appellant within normal period of limitation. However, since the issue involves interpretation of statutory provisions, we are of the view that the penalty cannot be levied against the appellant. The appeal is disposed of in the above terms.

[Dictated and pronounced in the open Court]

(C.L. MAHAR)
MEMBER (TECHNICAL)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

Ckp.