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

Date of Hearing/ Decision: 18/02/2019

Appeal No.ST/55171/2013-DB
[Arising out of Order-in-Appeal No. 45-2012-ST-JPR-II dated 06/11/2012 passed by the Commissioner of Central Excise and Service Tax-JAIPUR-II(Appeal)]

Jambeshwar Construction Co
A- 52, Krishna Nagar Pali Road Jodhpur, Rajasthan ....Appellant

Vs.

Commissioner of Central Excise and Service Tax-Jaipur-II ...Respondent

Appearance
Sh. O P Agarwal, Advocate for the appellant
Sh. G R Singh, DR for the respondent

CORAM: **Hon'ble Justice Shri Dilip Gupta, President**
Hon'ble Shri V. Padmanabhan, Member (Technical)

Final Order No: 50289/2019

Per V. Padmanabhan

1. The present appeal is directed against the Order-in-Original 45/2012 dated 02.11.2012. The appellant is engaged in providing various construction services. The dispute in this case covers the period 2006-07 to 2010-11. During this period the appellant provided various services such as construction of boundary wall, sewerage and drainage system, roads, laying of pipeline etc. Such services were provided in the residential complexes being constructed by M/s Hansal Properties and Infrastructure, Sahara

India Ltd., and Stadia Landmark. Since above services were provided in relation to construction of complex, Revenue took the view that the activity is taxable under the category of Construction of Residential Complex Services falling under Section 65 (30a) read with Section 65(91a) of the Finance Act, 1994. For demand of service tax for the period of dispute, Revenue issued Show Cause Notice dated 20.10.2011 which was adjudicated and finalised by issue of the impugned Order-in-Original. The Adjudicating Authority upheld the demand of service tax made in the Show Cause Notice, but extended the benefit of abatement to the extent of 67 % of the consideration received by the appellant, in terms of Notification No. 18/2005-ST as well as the successor Notification No. 1/2006-ST. Agitating against the demand for service tax made in the impugned order, the present appeal stands filed.

2. The case of the appellant is argued by Shri O P Agarwal, learned Consultant and Revenue is represented by Shri R K Manjhi .

3. Learned Consultant submitted that the demand for service tax made in the impugned order is not sustainable. The arguments advanced are summarised below;

(i) He submitted that the appellant has executed Construction Services. The activities contracted by the appellant involve a composite service in which the appellant was required to supply material to be used in the provision of construction service. He cited the decision of Hon'ble

Supreme Court in case of **Larsen and Tubro *reported in* [2015(39) ST (913)(SC)]** and submitted that Supreme Court has held that the composite service would be liable for service tax only under the category of Works Contract Service, which was introduced with effect from 1.06.2007. He submitted that as per the decision of the Apex Court, the demand for service tax for the period upto 31/05/2007, is liable to be set aside. He further submitted that even for the period from 1/06/2007, the demand is not sustainable since the appellant had been put on notice through Show Cause Notice proposing demand of service tax under the category of Construction of Complex Service but is covered under the WCS, as per *Larsen and Turbo decision (supra).* In this connection, relied upon various case laws including;

(a) Ashish Ramesh Dasarwar Vs. CCEST [2017(TIOL) 3230-CESTAT-MUM]

(b) Shree Mohangarh Construction Co. VS CCE, Jaipur-II vide Final Order No. 51322-51323/2018 dated 12.04.2018.

4. Learned AR justified the impugned order with the submission that the Adjudicating Authority did not have the benefit of the decision of the Apex Court in case of *Larsen and Tubro Ltd*.

5. We have considered the arguments advanced by both sides and perused the appeal record.

6. The dispute which covers the period 2006-07 to 2010-11, is in respect of the activity of Construction provided by the appellant in relation to Construction of Residential Complex by certain builders. From the nature of service provides, it is evident that the appellant was also required to supply the construction material to be used in the activity of construction. Consequently the activity is in the nature of composite service.

7. We have very carefully perused the decision of the Hon'ble Supreme Court in case of *Larsen and Turbo (supra*). The Apex Court has held that composite services are to be classified only under the category of Works Contract Services with effect from the date of introduction of such service i.e. 1.06.2007. The Apex Court has also categorically held in its finding that such composite services cannot be liable for service tax under any other category prior to the introduction of WCS. In the light of the decisions of Apex Court, there can be no levy of service tax for the period upto 31.05.2007.

8. The perusal of the Show Cause Notice indicates that the demand for the service tax has been raised under the category of Construction of Residential Complex Services. In view of the Apex Court decision in the case of *Larsen and Tubro* (supra) the liability for service tax, if at all, can be raised only under the category of WCS. Perusal of the decisions relied

upon by the learned Consultant for the appellant leads us to the position that the demand raised under the Construction of Complex Services cannot be upheld in view of the Apex Court decision. In the ***Ashish Ramesh Dasarwar*** case the Tribunal has taken the view that the demand for service tax is liable to be set aside if the Show Cause Notice proposed a classification different from WCS for activity of construction;

> *"6. As regards the period after 1.6.2007, since the demand was raised under 'commercial or industrial construction service, whereas admittedly the service is correctly classifiable under work contract service, demand raised under wrong head of service cannot sustain."*

9. In view of above discussions, we set aside the impugned order and allow the appeal.

(Dictated and pronounced in open court)

(Justice Dilip Gupta)
President

(V. Padmanabhan)
Member(Technical)

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