

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench
Court – I

Appeal No. ST/2417/2011

(Arising out of Order-in-Appeal No. 48/2011 (H-II) S. Tax dated
27.06.2011 passed by Commissioner of Customs, Central Excise and
Service Tax (Appeals-II), Hyderabad)

M/s Shah & Kumar Associates

.....Appellant(s)

Vs.

**Commissioner of Customs, Central Excise
& Service Tax, Hyderabad**

.....Respondent(s)

Appearance

Shri G. Natarajan, Advocate for the Appellant(s).

Shri Arun Kumar, Deputy Commissioner (AR) for the Respondent(s).

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 26/12/2018

Date of Decision: 26/12/2018

FINAL ORDER No. A/31623/2018

[Order per: M.V. Ravindran]

This appeal is directed against Order-in-Appeal No.
48/2011 (H-II) S. Tax dated 27.06.2011.

2. Heard both sides and perused the records.

3. The relevant facts that arise for consideration in this case
are appellants rendered Commercial or Industrial Construction service

(CICS) to ICICI Bank at different places; on investigation, it was noticed that they had not paid the service tax on the amounts received from ICICI Bank during the period 10.09.2004 to 16.06.2005; show cause notice was issued demanding the tax interest and proposing to imposed penalties under various sections. The proposal in the show cause notice was to classify the services rendered by them under CICS. The Adjudicating Authority after following due process of law, confirmed the demands raised.

4. Learned Counsel at the outset submits that the entire agreement with ICICI Bank could classify the services under works contract service as there is transfer of property along with activity of construction. He fairly submits that this particular point as to the activity being covered under works contract service and could be covered by the judgement of the Hon'ble Apex Court in the case of *Larsen & Toubro Ltd.*, [2015 (39) STR 913 (SC)], was not argued before the lower authorities.

5. After considering the submissions made by both sides and perusal of records, we find the issue needs reconsideration by the Adjudicating Authority. We find that the point as to whether the work executed by the appellant with ICICI Bank needs to be considered by the Adjudicating Authority, as also the judgement of the Apex Court in the case of *Larsen & Toubro (supra)*. It is to be noticed that the period involved in this case is prior to 01.06.2007.

6. Without expressing any opinion on the merits of this case, leaving all the issues open, the impugned order is set aside and the appeal is disposed of by way of remand to Adjudicating Authority with direction to dispose of the matter after following principles of natural justice.

7. Appeal stands remanded to Adjudicating Authority to reconsider the issue afresh.

(Operative part of this order was pronounced in open court
on conclusion of hearing)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

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