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

Division Bench

Court – I

**Appeal No. ST/22473/2014**

(Arising out of Order-in-Original No. VIZ-STX-001-COM-028-14 dated 10.03.2014 passed by CCCE & ST, Visakhapatnam-I)

**Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam - I**
**Port Area, Visakhapatnam – 530 035** **......Appellant**

*VERSUS*

**M/s J.D. Constructions**
**D.No.50-37-13, TPT Colony, Seethammadhara, Visakhapatnam, Andhra Pradesh – 530 013** **......Respondent**

**Appearance**
Shri N. Bhanu Kiran, Authorized Representative for the Respondent.
Shri Y. Sreenivasa Reddy, Advocate for the Appellant.

**Coram:**
**HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)**
**HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)**

**FINAL ORDER No. A/30580/2019**

**Date of Hearing: 18.06.2019**
**Date of Decision: 18.06.2019**

**[Order per: SULEKHA BEEVI C.S.]**

1. The above appeal is filed by the department against Order passed by the Commissioner, extending the benefit of composition scheme to the appellants to discharge the service tax under 'Works Contract Services'.

2. On behalf of the appellant, learned AR Shri N. Bhanu Kiran appeared and argued the matter. He submitted that appellants have not applied for composition scheme or have they intimated to the department with regard to their intention to exercise such option. The Commissioner, even then, extended the benefit to the assessee to pay the tax liability under composition scheme which is erroneous.

3. Learned Counsel for the assessee, Shri Y. Sreenivasa Reddy, argued the matter. He adverted to the Final Order No. 22429/2014 dated 31.12.2014 and submitted that assessee had also filed an appeal against the very same order which was disposed of by the Tribunal by the said Final Order dated 31.12.2014 wherein the matter was remanded. The assessee herein is aggrieved since the Commissioner had applied Service Tax @ 4% in respect of 'Works Contract Service' when actually assessee is liable to pay reduced rate. For examining this submission with regard to calculation and quantification he requested that the matter was remanded to the adjudicating authority, that the issue of penalty also then may be reconsidered.

4. Heard both sides. Taking into consideration the fact that the appeal filed by the assessee against the very same impugned order has been remanded to the adjudicating authority, we are of the considered opinion that this appeal filed by the department also requires to be remanded, so that both the matters can be heard and disposed of together by the adjudicating authority, as far as possible. The impugned order is set aside to this extent and remanded to the adjudicating authority.

5. The appeal is allowed by way of remand.

(Dictated and pronounced in open court)

**(SULEKHA BEEVI C.S)**
**MEMBER (JUDICIAL)**

**(P.VENKATA SUBBA RAO)**
**MEMBER (TECHNICAL)**

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