CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EAST REGIONAL BENCH : KOLKATA

Service Tax Appeal Nos. ST/76150/14,76151/14 & 76367/14

(Arising out of the Order-in-Original No.04/S. Tax/Commr./2014 dated-22/04/2014 passed by the Commissioner, Central Excise & Service Tax, Jamshedpur)

1) Prefabs Pvt. Ltd.
2) Atul Sahay, Director

...APPELLANT(S)

VERSUS

Commr. of Central Excise &
Service Tax, Jamshedpur
&
Prefabs Bihar Pvt. Ltd.

...RESPONDENT(S)

APPEARANCE

Sri A.K. Srivastava, Advocate

FOR APPELLANT(S)

Sri H.S. Abedin, A.C. (A.R.)

FOR THE RESPONDENT(S)

CORAM:
JUSTICE DR. SATISH CHANDRA, HON'BLE PRESIDENT
SHRI C.J. MATHEW, HON'BLE TECHNICAL MEMBER

DATE OF HEARING : 21/03/2018 **Date of Pronouncement: 23/03/2018**

FINAL ORDER NO. : 75592-75594/2018

Per C.J. MATHEW,

This appeal is directed against order-in-original no.04/S. Tax/Commr./2014 dated-22nd April 2014 of Commissioner, Central Excise & Service Tax, Jamshedpur.

2. The adjudicating authority confirmed the demand of Rs. 41,32,114.00 as provider of 'commercial and industrial service' and approprited the tax of Rs.21,94,400/- already paid and confirmed a

further demand of Rs.1,85,588/- besides imposing penalties under section 78 and section 77 on the assessee while imposing a penalty of Rs.50,000/- under section 77 of Finance Act, 1994 on Shri Atul Sahai, Director. The appeals of the assessee and the Director are disposed off by this common order.

3. Learned Counsel for the appellants submits that they are in business of manufacturing of ' pre-stressed concrete slabs and pillars' which are utilized while rendering " erection , commissioning and installation' of plant. The demand pertains to the period from 1st October 2007 to 31st December 2012. Furthermore, it is alleged that the appellant, as provider of 'goods transport agency service', for the period from April 11 to December 2012 did not discharge tax liability.

4. Heard the Learned Authorised Representative.

5. It is clear from the records and the submissions made by both sides that the appellant-assessee is provider of 'works contract service' but, during the relevant period, had been discharging the tax liability on the service component of 'commercial and industrial construction service'. The issue of composite contracts has since been settled by the Hon'ble Supreme Court in *Commissioner of Central Excise, Kerala V. Larsen & Toubro Ltd. [2015 (39) STR 913 (SC)].* .

6. The contention of Learned Authorised Representative is that the appellant is a provider of finishing service which is not eligible for abatement and they are liable to discharge tax liability w.e.f. 1st June, 2007 as provider of 'works contract service'.

7. In view of the decision of the Hon'ble Supreme Court, the appellant is also entitled to the benefit of the Works Contract Service (Composite Scheme for Payment of Service Tax Rules), 2007. Accordingly, the liability of the assessee needs to be ascertained. Furthermore, in connection with

the availment of 'goods transport agency', it would appear that the adjudicating authority has not examined the claim of the appellant made during the proceedings.

7. In view of the above, the matter would require a fresh ascertainment on the above two limited grounds for which reason we set aside the impugned order and remand the matter to the original authority for decision on the terms enumerated above. The appeals are disposed off by way of remand.

(Pronounced in the Court on 23/03/2018)

Sd/-

(DR. SATISH CHANDRA)
PRESIDENT

Sd/-

(C.J. MATHEW)
TECHNICAL MEMBER

k.b/-