IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Appeal No. ST/254/12

(Arising out Order-in-Original No. 01/ST/2012/C dated 23.01.2012 passed by the Commissioner of Central Excise, Nagpur)

For approval and signature:
Hon'ble Shri S.S. Garg, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982?	No
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4.	Whether Order is to be circulated to the Departmental authorities?	Yes

MF Jain — Appellant

Vs.

CCE Nagpur — Respondent

Appearance:

None for the appellant
Shri M.K. Sarangi, Jt. Commissioner (AR) for the respondent

CORAM:
Hon'ble Shri S.S. Garg, Member (Judicial)
Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing : 30.01.2018
Date of decision : 29.05.2018

O R D E R No: **A/86600 / 2018**

Per: C J Mathew

M/s MF Jain challenges the confirmation of liability of `1,48,28,716 for providing taxable services, interest thereon, and the various penalties imposed under section 76, 77 and 78 of Finance Act, 1994 in having failed discharge the liability. Commissioner of Central Excise & Service Tax, Nagpur has, *vide* order-in-original no. 01/ST/2012/C dated 23rd March 2012, held that appellant had rendered various services but failed to remit the tax due on the consideration thereof for the period from 2005-06 to 2009-10.

2. None appeared for the appellant. Learned Authorized Representative submitted a tabulation of the payments effected by the appellant under the various heads of services. We have also considered the grounds of appeal.

3. The activities that were identified by the adjudicating authority as liable to tax are ‘management, maintenance and repair service’, ‘commercial or industrial construction service’, ‘cleaning activity service’, ‘cargo handling service’, ‘works contract service’ and ‘supply of tangible goods service.’

4. We take note that appellant contends that they had rendered ‘goods transport agency’ service for which the

liability was limited and that the impugned order has wrongly classified the activity as 'cargo handling service' to extract the full tax from them. It is also contended that on the 'cleaning activity', they had discharged the liability under another head which the adjudicating authority refused to acknowledge leading to this demand all over again. On 'works contract service', it is submitted that the benefit of abatement was not granted to them.

5. The appellant further contends that the classification as 'management, maintenance and repair service' pertains to road upkeep under various contracts that should rightly fall under 'works contract' and that appropriate abatement should have been granted.

6. On perusal of the other two services, we take note that the adjudicating authority was deprived of the clarity afforded by the Hon'ble Supreme Court in *Commissioner of Central excise & Customs, Kerala v. Larsen& Toubro Ltd. [2015 (39) STR 913 (SC)]* here in deciding upon the taxability. The decision has clearly distinguished 'works contract service' and as inclusive supply of materials in contradistinction to the separate taxability of the various categories of this service during the earlier period as restricted to service *simpliciter*; any such contract that included supply of material was liable to tax only after the incorporation of 'works contract service' in section 65 of

Finance Act, 1994. This is an aspect that requires scrutiny afresh.

7. Considering the discarding of the various claims of the appellant in the adjudication process and the need to have a fresh look at the contracts involving supply of materials, we are of the opinion that the matter needs fresh adjudication on all the issues. Accordingly, we set aside the impugned order and remit the matter to the adjudicating authority for that purpose.

(Pronounced in Court on 29.05.2018)

(S.S. Garg)
Member (Judicial)

(C J Mathew)
Member (Technical)

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