

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI**

APPEAL NO: ST/86261/2015

[Arising out of Order-in-Original No: KLH-EXCUS-000-COM-003-15-16 dated 30th April 2015 passed by the Commissioner of Central Excise & Service tax, Kolhapur.]

For approval and signature:

**Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)**

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : Yes
 2. Whether it should be released under Rule 27 of CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
 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
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Shri Sai Rohit Construction

... *Appellant*

versus

Commissioner of Central Excise & Service Tax
Kolhapur

... *Respondent*

Appearance:

Shri Pradumna GH, Advocate for appellant applicant

Shri MP Damle, Assistant Commissioner (AR) and Shri M Suresh,
Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)
Hon'ble Shri Ajay Sharma, Member (Judicial)

Date of hearing: 17/12/2018
Date of decision: 17/12/2018

ORDER NO: A/88295 / 2018

Per: C J Mathew

This appeal lies against order-in-original no. KLH-EXCUS-000-COM-003-15-16 dated 30th April 2015 of Commissioner of Central Excise & Service tax, Kolhapur ordering recovery of tax of ₹ 66,14,436/- along with interest thereon, as provider of 'works contract service' besides imposing penalty under section 77 and 78 of the Finance Act, 1994.

2. We have heard Learned Counsel for the appellant and Learned Authorised Representative.

3. It is not in dispute that the appellant had been rendering 'works contract service' chargeable to tax under section 65(105)(zzzza) of Finance Act, 1994 and that the appellant had not opted for the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007. Learned Counsel, however, contends that even without exercising that option, tax is leviable only on the service component at

the normal rate of tax. It is submitted that the delineation between service and goods has not found a place in the findings of the original authority and that the certificate of Chartered Accountant certifying the correct computation was ignored.

4. Since the issue of the impugned order, the Hon'ble Supreme Court has, in *Commissioner of Service Tax v. Larsen & Toubro Ltd [2015(39) STR 913 (SC)]*, rendered finality to the extent to which Finance Act, 1994 will govern 'works contract'. The adjudicating authority did not have the benefit of the law as declared by the Hon'ble Supreme Court.

5. In view of the claim of the appellant for disaggregation of the goods component of the 'works contract' and the limited extent to which liability lies, we set aside the impugned order and remand the matter back to the adjudicating authority to decide the matter afresh in the light of the decision of the Hon'ble Supreme Court. Needless to say, the appellant shall be placed on notice so that opportunity to be heard is made available.

(Pronounced in Court)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)