CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Service Tax Appeal No. 88597 of 2014

(Arising out of Order-in-Original No. 07 to 09//MAK (07 to 09) COMMR/RGD/14-15 dated 19.05.2014 passed by the Commissioner of Central Excise, Raigad)

M/s. JM Mhatre Infra Pvt Ltd …..**Appellant**
Plt no. 492, Market Yard,
Sahakar Nagar, Panvel
Dist. Raigad

Vs.

Commissioner (STC), Central Excise, Raigad …..**Respondent**
4th Floor, Utpad Shulk Bhawan,
Plot no. 1, Sector 17, Khadeshwar

And

Service Tax Appeal No. 89003 of 2014

(Arising out of Order-in-Original No. 07 to 09//MAK (07 to 09) COMMR/RGD/14-15 dated 19.05.2014 passed by the Commissioner of Central Excise, Raigad)

Commissioner (STC), Central Excise, Raigad …..**Appellant**
4th Floor, Utpad Shulk Bhawan,
Plot no. 1, Sector 17, Khadeshwar

Vs.

M/s. JM Mhatre Infra Pvt Ltd …..**Respondent**
Plt no. 492, Market Yard,
Sahakar Nagar, Panvel
Dist. Raigad

APPEARANCE:

Shri Bharat Raichandani, Advocate for the appellant
Shri Bidhan Chandra, Addl. Commissioner (AR) for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

FINAL ORDER No: A/87632-87633 / 2019

DATE OF HEARING : 10.07.2019
DATE OF DECISION : 10.07.2019

PER: C J MATHEW

Two appeals, one of M/s JM Mhatre Infra P Ltd and one of Revenue, are before us impugning order-in-original no. 07 to 09/MAK (07 to 09) COMMR/RGD/14-15 dated 19th May 2014 of Commissioner of Central Excise, Customs & Service Tax, Raigad, which disposed of three show cause notices pertaining to 2005-06 to 2009-10, for 2010-11 and for 2011-12 demanding ₹31,75,27,326/-, ₹12,82,96,269/- and ₹9,67,88,973/- being tax not discharged on alleged rendering of 'commercial and industrial construction service', 'site formation and clearance, excavation and earthmoving and the demolition service', 'management maintenance repair service', 'renting of immovable property service' and 'transport goods by road' service during theses period. Both appeals are disposed of by this common order.

2. From the records, it would appear that the first two notices had been adjudicated *vide* order dated 25th September 2012 and the

continued refusal of the assessee to comply with the confirmed demand as well as for the subsequent period prompted the issue of the third notice dated 16th July 2013. It also appears in the record that the assessee had sought the jurisdiction of the Tribunal against that very order and the appeal was disposed off with a direction to the adjudicating authority to decide the matter afresh after taking into consideration documents and other evidences to be furnished by the assessee as evidence of their claim for exemption from service tax.

3. Summarising the outcome of the impugned order, Learned Counsel for the appellant informed that the demand pertaining to ‘commercial and industrial construction service’, ‘management, maintenance or repair service’ and ‘transport of goods by road service’ had been dropped by the adjudicating authority and that, while confirming the demand of ₹6,93,643/- pertaining to ‘cargo handling service’ and of ₹61,66,691/- on ‘renting of immovable property service’, the demand on ‘site formation and clearance, excavation and earthmoving and demolition service’ had been partly confirmed to the extent of ₹63,15,236/- and that their appeal is on that score. The appeal of Revenue is restricted to the dropping of demand of ₹3,25,39,783/- on account of ‘transport of goods by road’ service on the finding that ₹54,85,051/- pertains to per trip charge below ₹1500 /-, ₹76,58,461/- pertains to hiring of individual trucks and

₹1,93,96,271/- arises from erroneous inclusion in the proposed demand.

4. Learned Counsel for appellant submits that the confirmed liability towards rendering of ‘renting of immovable property service’ had been discharged and that their plea for waiver of penalty had been ignored by the adjudicating authority. He further submits that they do not wish to dispute the demand confirmed as provider of ‘cargo handling service’ or ‘transportation of goods by road’ service. As far as the partial confirmation of demand on the rendering of ‘site formation and clearance, excavation and earthmoving and demolition service’, it is his contention that, in the light of the decision of the Hon’ble Supreme Court in *Commissioner of Central Excise & Customs, Kerala v. Larsen & Toubro Ltd [2015 (39) STR 913 (SC)]*, the demand should have been limited to the service component and that the lack of finality thereon, at the time of adjudication, can be rectified now.

5. It is contended by Learned Authorised Representative that, with the adjudicating authority having extend the benefit of notification no. 12/2003-ST dated 20th June 2003, the scope for claiming further benefit as provider of ‘works contract service’ does not have merit. It is further contended that, of the fifty work orders that were impugned in the notice, only a few were subject to tax and, that too, on grounds

which are amplified sufficiently by the adjudicating authority. According to him, production of certificate of Chartered Accountant is not a substitute for the documentary proof envisaged in notification no. 12/2003-ST dated 20th June 2003 for which he relies upon the decision of the Tribunal in *Commissioner of Customs & Central Excise, Aurangabad v. New Hindustan Rubber Works [2015 (37) STR 120 (Tri-Mumbai)]* and in *Ador Fontech Ltd v. Commissioner of Central Excise, Nagpur[2014 (36) STR 146 (Tri-Mumbai)]*.

6. Insofar as appeal of Revenue is concerned, he contends that the decision of the Tribunal in *Sree Balaji Transport v. Commissioner of Customs, Central Excise & Service Tax, Tirupati [2015 (38) STR 651 (Tri-Bang)]* and those of the Hon'ble High Court of Madras in *Commissioner of Central Excise, Salem v. KMB Granites Pvt Ltd [2014 (35) STR 63 (Mad)]* and in *Commissioner of Central Excise, Salem v. Subramania Siva Co-op Sugar Mills Ltd [2014 (35) STR 500 (Mad)]* offer guidance.

7. The decision of the Hon'ble Supreme Court in *re Larsen & Toubro Ltd* has altered the contours of tax liability arising from the several activities that existed earlier independently and now enumerated in 'works contract service' in Finance Act, 1994. The adjudicating authority had arrived at the conclusions in the impugned order without the benefit of that wisdom. On the clear finding of the

adjudicating authority of the error in computation for inclusion in the proposed demand pertaining to 'transport of goods by road' service, we find no contrary evidence to overrule the decision therein. The impugned order has cited the speech included with the documents for presentation of Budget 2004-05. Learned Authorised Representative has placed before us decisions of the Hon'ble High Court of Madras in *re KMB Granites Pvt Ltd* and in *re Subramania Siva Co-op Sugar Mills Ltd.* The proposal in the show cause notice would have to be evaluated in the context of 'transport of goods by road' service sought to be taxed under Finance Act, 1994. The submission on the penalty proposed in relation to non-payment of tax as provider of 'renting of immovable property service' also requires disposal.

8. In the circumstances, it would be appropriate to set aside the impugned order to the extent of challenge by the rival sides that remains unanswered in our findings *supra* to enable fresh decision by the adjudicating authority. The matter is, therefore, remanded to the original authority for compliance with our directions above. The appeals and memorandum of cross objection are, accordingly, disposed of.

(Operative part pronounced in Court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(C J Mathew)
Member (Technical)

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