

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL  
CHENNAI**

REGIONAL BENCH – COURT NO. I

**Service Tax Appeal No. 42101 of 2013**

**AND**

**Service Tax Appeal No. 42102 of 2013**

(Arising out of common Order-in-Original Nos. 10 & 11/2013 dated 19.06.2013 passed by the Commissioner of Central Excise, Chennai-I Commissionerate, 26/1, Mahatma Gandhi Road, Nungambakkam, Chennai – 600 034)

**M/s. Rani Meyammai Towers**

**: Appellant**

Chettinad House,  
Raja Annamalaipuram,  
Chennai – 600 028

**VERSUS**

**The Commissioner of Service Tax**

**: Respondent**

26/1, Mahatma Gandhi Road, Nungambakkam,  
Chennai – 600 034

**APPEARANCE:**

Shri K.A. Parthasarathi, Advocate for the Appellant

Smt. K. Komathi, Additional Commissioner for the Respondent

**CORAM:**

**HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)**

**HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

**FINAL ORDER NOS. 40307-40308 / 2023**

DATE OF HEARING: 11.04.2023

DATE OF DECISION: 26.04.2023

**Order : [Per Hon'ble Mr. P. Dinesha]**

These appeals are filed by the assessee against the Order-in-Original Nos. 10 & 11/2013 dated 19.06.2013 passed by the Commissioner of Central Excise, Chennai.

2. Shri K.A. Parthasarathi, Learned Advocate, appeared for the appellant and Smt. K. Komathi, Learned Additional Commissioner, appeared for the respondent.

3.1 A perusal of the Show Cause Notices reveals that the Internal Audit Group of the Service Tax Commissionerate, Chennai had conducted an audit of accounts of the appellant wherein they appeared to have noticed that the appellant had not been paying Service Tax under Construction of Complex Service ('CCS' for short). A Show Cause Notice dated 21.10.2010 came to be issued wherein it is observed that *"... the assessee has undertaken construction of 128 flats in Rani Meyyammai Towers, Phase II which was started during November, 2006, through M/s. South India Corporation Limited ... the assessee enters into agreement for construction of flat .... The agreement also stipulates various stages of payment towards construction ..."*, at paragraph 2.0 therein.

3.2 Further, at paragraph 2.1 of the above Show Cause Notice, it is mentioned that *"... Accordingly, the assessee is liable to pay service tax under the category of Construction of Complex Service from February, 2007. However, it was noticed they started paying service tax from December, 2007 under "Works Contract Service" ...."*

3.3 Further, paragraph 2.3 of the Show Cause Notice reads as under: -

*"2.3 In as much as the assessee provided construction service as per the terms and conditions of the Construction agreement mentioned above, it appears that they are liable to pay service tax under "Construction of Complex Service" from February, 2007 onwards.*

*.... for the whole project ...."*

4. Based on the above observations, a proposal was made in the Show Cause Notice to demand Service Tax on the above service for the period from 01.02.2007 to 30.06.2010, apart from applicable interest and penalties under Sections 76, 77 and 78 of the Finance Act, 1994. Subsequently, another Show Cause Notice dated

17.10.2011 has been issued to the assessee proposing similar demand of Service Tax along with applicable interest and penalty for the period from July 2010 to March 2011.

5. It appears that the appellant filed its replies denying any tax liability, but however, not satisfied with the same, the impugned common Order-in-Original Nos. 10 & 11/2013 dated 19.06.2013 has been passed, wherein the demands proposed in the Show Cause Notices, *inter alia*, of Service Tax under CCS for the periods from February 2007 to June 2010 and July 2010 to March 2011, have been upheld. It is against this common Order-in-Original that the present appeals have been filed before this forum.

6. The Learned Advocate for the appellant would submit, at the outset, that the demand confirmed under CCS in the impugned order does not survive as the same has been settled by the judgement of the Hon'ble Apex Court in the case of *Commissioner of C.Ex. & Cus., Kerala v. M/s. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)]*, which decision has been followed by various Benches of the CESTAT. He would specifically invite our attention to a recent order of this very Bench of the Tribunal in the case of *M/s. Dharani Developers Pvt. Ltd. v. The Commissioner of Central Excise and Service Tax, Chennai-II [Final Order No. 40081/2023 dated 20.02.2023 - CESTAT, Chennai]* wherein the order in the case of *M/s. Real Value Promoters Pvt. Ltd. v. Commissioner of G.S.T. and Central Excise, Chennai & ors. [Final Order Nos. 42436-42438/2018 dated 18.09.2018 - CESTAT Chennai]* has been followed, and in the said order in the case of *M/s. Real Value Promoters Pvt. Ltd. (supra)*, the judgement of the Hon'ble Supreme Court in *M/s. Larsen & Toubro Ltd. (supra)* has been followed.

7. *Per contra*, the Learned Representative for the Revenue relied on the findings of the lower authority.

8. We have heard both sides, have perused the documents placed on record and have also gone through

the decisions / orders relied upon during the course of arguments.

9. It is a matter of record, as observed by us from the Show Cause Notice, which are extracted above, that the appellant, who is a developer, was rendering typical works contract service, for which reason they had started paying Service Tax with effect from December 2007, thereby availing the benefit under the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007. The fact however remains, by virtue of the construction agreements entered into with their prospective buyers, that, in essence, they were rendering works contract service in the construction of flats and this aspect has not been denied by the Revenue either in the Show Cause Notices or in the impugned order.

10.1 The CESTAT, Chennai Bench in the case of *M/s. Real Value Promoters Pvt. Ltd. (supra)* has, following the dictum of the Hon'ble Supreme Court in *M/s. Larsen & Toubro Ltd. (supra)*, held that in respect of projects executed prior to 01.06.2007, being in the nature of composite works contract, could not be brought within the fold of commercial or industrial construction service or construction of complex service and for the period post 01.06.2007, the liability to Service Tax could be fastened only if the activities were in the nature of services simpliciter. The period of dispute is from February 2007 to June 2010 and from July 2010 to March 2011, and there is no dispute that from December 2007, the appellant is remitting the Service Tax under works contract service.

10.2 Further, the co-ordinate Hyderabad Bench of the CESTAT in the case of *Commissioner of Customs, Central Excise and Service Tax, Visakhapatnam-I v. M/s. Pragati Edifice Pvt. Ltd. [2019 (31) G.S.T.L. 241 (Tri. - Hyderabad)]*, also had an occasion to consider an identical issue and the following ruling was given in the said case: -

"(n) To sum up, as far as construction of 'residential complexes' by the builders are concerned :

(i) Prior to 1-6-2007, if it is a composite works contract, no Service Tax is leviable in view of the judgment of the Hon'ble Apex Court in the case of *Larsen & Toubro (supra)*.

(ii) After 1-6-2007, it is chargeable as 'works contract' only if it is a composite contract and under 'construction of complex services' if it is a service simpliciter.

(iii) However, after 1-6-2007 but prior to 1-7-2010, whether it is a service simpliciter or a works contract, if the service is rendered prior to issue of completion certificate and transfer to the customer, it is not taxable being in the nature of self service.

(iv) Further, whenever the service is rendered for completion or construction of a flat for personal use of the service recipient, no Service Tax is payable in view of the exclusion in the definition of residential complex service.

(v) After 1-7-2010, Service Tax is chargeable under the head of 'construction of complex services' if it is service simpliciter and under 'works contract service' if it is a composite works contract."

11. From the above, the position of law is that there is no Service Tax liability as and when the construction of flat is for the personal use of the service recipient. Admittedly, in the case on hand, by virtue of agreements entered into by the appellant with the prospective buyers, which is reflected in the Show Cause Notice and which we have extracted at paragraph 3.1 (*supra*), it appears that there is no dispute that the construction of flats was for the service recipients per se.

12. In view of our above discussions, we are of the clear view that the demand, as confirmed in the impugned order, cannot sustain, for which reason the same is set aside and the appeals are allowed with consequential benefits, if any, as per law.

(Order pronounced in the open court on **26.04.2023**)

Sd/-  
**(VASA SESHAGIRI RAO)**  
MEMBER (TECHNICAL)

Sd/-  
**(P. DINESHA)**  
MEMBER (JUDICIAL)

Sdd