

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE**

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 25746 of 2013

[Arising out of Order-in-Original No. 31/2012/ST dated
10/12/2012 passed by Commissioner of Central Excise and
Service Tax, COCHIN]

M/s. Ninan Jacob Associates

2C, South Point Hinton,
Chittoor Road, North Side,
Kacheripady,
ERNAKULAM,
KOCHI - 682 018.
KERALA

Appellant(s)

VERSUS

**Commissioner Of Central Tax &
Central Excise, Cochin**

C.R. Buildings, I.S Press Road
Cochin - 682018
Kerala

Respondent(s)

Appearance:

Mr. Kuriyan Thomas, Advocate

MENON & PAI ADVOCATES
P.B.NO.1911, I.S.PRESS ROAD, E
RNAKULAM, COCHIN - 18

For the Appellant

**Mrs. C. V. Savitha,
Superintendent (AR)**

For the Respondent

Date of Hearing: 12/02/2020

Date of Decision: 29/05/2020

CORAM:

HON'BLE SHRI S.S GARG, JUDICIAL MEMBER

HON'BLE SHRI P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 20346 / 2020

Per : P. ANJANI KUMAR

The appellants are registered under Service Tax for provision of services of 'Architect Service' and 'Works Contract' service from 2003 and

2009, respectively. Disputing the classifications made by the appellant, Revenue issued a show-cause notice dated 20.4.2011 covering a period 2005-06 to 2009-2010 classifying the services under 'Commercial Construction Service', 'Business Auxiliary Service', 'Renting of Immovable Property Service' and 'Architect Service' and which were confirmed by the Order-in-Original No.31/2012-ST dated 10.12.2012.

2. Learned counsel for the appellant submits that they have entered into various works contract and have registered with Sales Tax / VAT; learned Commissioner erred in holding that as the appellant got registered as Works Contract Service provider only with effect from 1.6.2009, the composite contracts undertaken by him prior to this date need to be classified as 'Commercial Construction Service'. He submits that the case is squarely covered by the decision of the apex court in the case of **Larsen and Toubro: 2015 (39) STR 913 (SC)**. In view of the same, they have opted for composition scheme under Works Contract as upheld by the Tribunal in **2019 (31) GSTL 241 (Tri.-Hyd.)**. On going through the bills raised by ICICI Bank, HDFC Bank on the appellant, it is seen that the contracts awarded were for interior furnishing and made provisions for payment of reimbursable items. In view of the same, it is seen that the services rendered by the appellant are in the nature of Works Contract service, which could not be taxed before 1.6.2007 in view of the decision rendered in the case of Larsen & Toubro (supra). With effect from 1.6.2009, we find that the appellant is not taxable under 'Works Contract Service' before 1.6.2007 and the appellant had rightly opted for composition scheme thereafter. The nature of the service provided having not changed in-between, the department is not free to classify the service under different heads for different periods. We find that the demand on this count is not sustained.

3. The appellants have collected amounts from their clients for payment of statutory charges to Electricity Board, Municipal Corporation, etc., on behalf of the clients. Department has viewed this as 'Business Auxiliary Service'. In view of the decision of the apex court in case of

Intercontinental Consultants and Technocrats Pvt. Ltd.: 2018 (10) GSTL 401 (SC), we find that no service has been rendered by the appellant to the clients of the appellants in relation to promotion of business or marketing of the goods. Therefore, we hold that demand on this count is also not sustained.

4. Referring to the demand on 'Renting of Immovable Property' services, the appellant submit that they have discharged service tax on the same and have produced the proof thereof, before the adjudicating authority. He submits that going by the Delhi High Court judgment in the case of ***Home Solutions Retails (I) Ltd. 2011 (24) STR 129 (Del.)***. Tax is payable by them only after 23.9.2011 though the said decision is under challenge before Supreme Court. As the Service Tax stands paid, we do not find any reason to sustain the demand.

5. Referring to a small demand of Rs.1,573/-, the appellant submits that the amount excluded by them while paying the duty under the category of 'Architect' service was for the sale of tender forms and the same was not appreciated by the Commissioner. The appellant also submits that in case the tax paid by them could not be treated as payment of tax under the category of 'Works Contract' service, the same may be refunded to them. However, in view of our discussion above, we find that the appellant has correctly paid service tax under the 'Works Contract' service, there would be no case for refund. All the demands raised, however, are not sustainable.

6. The learned Authorized Representative for the department, reiterated the findings of the Order-in-Original, however, in view of our discussion above, we find that the same are not acceptable.

7. In view of the above, the appeal is allowed.

(Order was pronounced in Open Court on **29/05/2020.**)

(S.S GARG)
JUDICIAL MEMBER

(P. ANJANI KUMAR)
TECHNICAL MEMBER

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