CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 557 of 2010

(Arising out of Order-in-Appeal No.23/2010 dt. 11/01/2010 passed by Commissioner of Central Excise (Appeals), Mangalore)

M/s. M. Srinagesh Hegde,
Megha Building, Balmatta Road,
Mangalore – 575 001. **................ Appellant(s)**

VERSUS

Commissioner of Central Excise,
7th Floor, Trade Centre, **................ Respondent(s)**
Bunts Hostel Road,
Mangalore – 575 003.

Appearance:

Mr. Bhanumurthy, Advocate for the Appellant
Mr. P. Saravana Perumal, Addl. Commissioner (AR) for the Revenue.

Coram:

Hon'ble Dr. D.M. Misra, Member (Judicial)

Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20013 / 2023

Date of Hearing: 28.08.2023

Date of Decision: 01.01.2024

Per: Dr. D. M. Misra

This is an appeal filed against the Order-in-Appeal No.23/2010 dt. 11/01/2010 passed by the Commissioner of Central Excise (Appeals), Mangalore.

2. Briefly stated the facts of the case are that the appellant is engaged in building of commercial or industrial complexes and also provides consulting engineering service. On the basis of intelligence and followed

by investigation, show-cause notice was issued to the appellant on 22.10.2007 alleging that even though they have provided taxable service under the category of 'Commercial or Industrial Construction Service' and 'Consulting Engineer Service' during the relevant period from 01.04.2002 to 31.03.2007 but failed to discharge service tax. Accordingly, it was proposed to recover the same along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, the appellant filed appeal before the learned Commissioner (Appeals), who in turn, partly allowed their appeal by upholding the demand of Rs.1,15,651/- towards 'Consulting Engineer service' and Rs.15,00,040/- towards 'Commercial or Industrial Construction service' with interest, however, dropped the penalty imposed under various provisions of the Finance Act, 1994. Hence, the present appeal.

3. The learned advocate for the appellant has submitted that during the period in dispute, the appellant were providing services in the nature of civil construction of the basic structure of the building to one M/s. Motels & Infrastructure India Pvt. Ltd. The service provided by them includes both material and labour, except the ready-mix concrete and steel supplied free of cost by M/s. Motels & Infrastructure India Pvt. Ltd. He has submitted that the services rendered by them are in the nature of 'Works Contract Service'; hence not leviable to service tax prior to 01.06.2007 in view of the judgment of the Hon'ble Supreme Court in the case of CCE & C Vs. Larsen & Toubro Ltd. [2015(39) STR 913 (SC)]. He has fairly submitted that before the adjudicating authority as well as before the learned Commissioner (Appeals), they have claimed exemption under Notification No.01/2006-ST dt. 01.03.2006 and they

have not claimed the same as Works Contract service. He has submitted referring to the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. Commissioner of Income-Tax [1998(99) ELT 200 (SC)] that the question of law can also be raised at the appellate stage. Further he has submitted that they are registered with State VAT Department for providing Works Contract service as well as after 01.06.2007 and also obtained registration from Service Tax Department. He has submitted that the Department has not disputed any of their submissions that during the period they had rendered services, which include both labour and materials, which is evident from the running bills raised duly certified by the architect enclosed with the paper book. On the issue of rendering consulting engineer service during the relevant period, the appellant has not seriously disputed the said issue.

4. *Per contra*, learned AR for the Revenue reiterated the findings of the learned Commissioner (Appeals). He has submitted that even though in the show-cause notice as well as in the orders of the lower authorities, it is not disputed that the appellants are providing construction services along with materials; however, at no point of time, it was claimed by them as Works Contract service; accordingly, taxability has been disputed. Before the authorities below, the appellant had claimed benefit of Notification No.01/2006-ST dt. 01.03.2006.

5. Heard both sides and perused records.

6. We find that the service tax has been confirmed against the appellants for rendering 'Consulting Engineer Service' and also 'Commercial or Industrial Construction Service'. The appellant has not disputed before us the levy of service tax on 'Consulting Engineer

Service'; however, they have contested the confirmation of demand under the taxable category of 'Commercial or Industrial Construction Service'.

7. They have submitted that during the course of investigation before the authorities, the proprietor categorically stated in his statement dated 03.07.2007 that they are rendering construction service, which includes supply of materials like cement, sand, jally, bricks etc., and free supply of materials like ready-mix concrete (RMC) and steel required for the construction of hotels entrusted by M/s. Motels & Infrastructure India Pvt. Ltd. Thus, it is clear that the appellant has provided 'Works Contract Service' during the relevant period; a fact cannot be disputed considering the evidences on record.

8. The Works Contract Service became taxable w.e.f. 01.06.2007 as held by the Hon'ble Supreme Court in the case of Larsen & Toubro Ltd. (supra) and in the said case, it has been held that prior to 01.06.2007, works contract service cannot be subjected to service tax levy by vivisecting the composite service contract, which includes both goods and service. The said judgment has been followed by the Hon'ble Supreme Court in the case of Total Environment Building Systems (P) Ltd. Vs. Deputy Commissioner of Commercial Taxes [2022(63) GSTL 257 (SC)]. Their lordships observed as:

> ***12.*** *What was said by the Constitution Bench in Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 and Keshav Mills Co. Ltd. v. Commissioner of Income Tax, Bombay North, Ahmedabad, AIR 1965 SC 1636, on the principle of stare decisis clearly bind us. The judgment of this Court in the case of Larsen and Toubro Limited (supra) has stood the test of time and has never been doubted earlier. As observed hereinabove, the said decision has been*

followed consistently by this Court as well as by various High Courts and the Tribunals. Therefore, if the prayer made on behalf of the Revenue to re-consider and/or review the judgment of this Court in the case of Larsen and Toubro Limited (supra) is accepted, in that case, it will affect so many other assessees in whose favour the decisions have already been taken relying upon and/or following the decision of this Court in the case of Larsen and Toubro Limited (supra) and It may unsettle the law, which has been consistently followed since 2015 onwards. There are all possibilities of contradictory orders. Therefore, on the principle of stare decisis, we are of the firm view that the judgment of this Court in the case of Larsen and Toubro Limited (supra), neither needs to be revisited, nor referred to a Larger Bench of this Court as prayed, i.e., after a period of almost seven years and as observed hereinabove when no efforts were made to file any review application requesting to review the judgment on the grounds, which are now canvassed before this Court.

13. *At this stage, it is required to be noted that one of the appeals being Civil Appeal No. 6523 of 2014 filed by M/s. G.D. Builders is against the decision of the Delhi High Court in the case of G.D. Builders v. Union of India reported P). It is to be noted that the said decision of the Delhi High Court in the case of G.D. Builders (supra) has been specifically overruled by this Court in the case of Larsen and Toubro Limited (supra). The decision of the Delhi High Court in the case of G.D. Builders (supra) has been considered by this Court in the case of Larsen and Toubro Limited (supra) in paragraphs 28, 29, 30, 32, 33, 38 and 39 and ultimately, this Court opined that the decision of the Delhi High Court in the case of G.D. Builders (supra) is in fact contrary to a long line of decisions. It is further specifically observed and held that the decision of the Delhi High Court in the case of G.D. Builders (supra) is wholly incorrect in its conclusion that the Finance Act, 1994 contains both the charge and machinery for levy and assessment of service tax on indivisible works contract. It is reported that while deciding the group of matters in the case of Larsen and Toubro Limited (supra),* *the papers of the appeal filed by M/s. G.D. Builders being Civil Appeal No. 6523 of 2014 were also called and the Learned Counsel appearing on behalf of the G.D. Builders was also heard. It appears that, however, the Civil Appeal No. 6523 of 2014 filed by M/s. G.D. Builders against the decision of the Delhi High Court has not been specifically disposed of. Therefore, once the decision of the Delhi High Court in the case of G.D. Builders (supra), which is the subject matter of Civil Appeal No. 6523 of 2014 has been held to be wholly incorrect, Civil Appeal No. 6523 of 2014 filed by M/s. G.D. Builders has to be allowed and the judgment and order passed by the Delhi High Court has to be quashed and set aside.*

9. In view of the above, the impugned order is upheld to the extent of confirmation of demand of Rs.1,15,651/- with interest under 'Consulting Engineer Service' and modified by setting aside the demand of Rs.15,00,040/- confirmed against 'Commercial or Industrial Construction Service' which in fact is 'Works Contract Service'. Appeal is partly allowed as mentioned above.

(Pronounced in open court on .01.2024)

(D.M. Misra)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Raja...