CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No.1153 of 2010

(Arising out of Order-in-Original No. 14/2010/ST dated 08.03.2010 passed by the Commissioner of Central Excise and Customs, Cochin.)

M/s. Relcon Foundations (P) Ltd.
35/3078, Pokalakkattu Complex,
Thammanam Road,
Palarivattom,
Cochin – 682 025.

Appellant(s)

VERSUS

The Commissioner of Central Excise and Customs
C.R. Building, I.S. Press Road,
Cochin – 682 018.

Respondent(s)

APPEARANCE:

Shri Prakash.B, Advocate for the Appellant.

Shri K. A. Jathin, Deputy Commissioner (AR) for the Respondent.

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

FINAL ORDER NO. 21119 /2024

DATE OF HEARING: 05.09.2024

DATE OF DECISION: 05.09.2024

PER: D.M. MISRA

This appeal is filed against Order-in-Original No.14/2010/ST dated 08.03.2010 passed by the Commissioner of Central Excise and Customs, Cochin Commissionerate.

2. Briefly stated that facts of the case are that the appellants are engaged in providing taxable services under 'Construction of Complex services', 'Commercial or Industrial Construction service' and 'Works Contract services' during the relevant period. On the basis of scrutiny of the records of the appellant for the period February 2006 to September 2008, it was alleged that the appellant had discharged service tax by wrongly filing abatement under Notification No.1/2006 – ST dated 01.03.2006 for the period February 2006 to June 2007 and wrongly discharged service tax from July 2007 to March 2008 under 'works contract service', hence, a show-cause notice dated 24.07.2009 was issued to them for recovery of the service tax short-paid amounting to Rs.1,15,42,009/- with interest and proposal for penalty. On adjudication, the said demand was confirmed with interest and penalty.

3. At the outset, the learned advocate for the appellant has submitted that during the entire period of dispute, the appellant had rendered services in the nature of pilling work, which includes both material and labour. He submits that even though they were registered under 'Construction of Complex services' or 'Commercial or Industrial Construction service' during the said period, however, the services rendered by them all along were in the nature of 'works contract service'. In support, they have placed the sample copies of work order issued by different customers and also their VAT registration certificate and returns filed with the State authorities from time to time. He submits that the issue is covered by the judgment of the Hon'ble Supreme Court in the case of **CCE vs. Larsen and Toubro Ltd.: 2016 (1) SCC 170** and **Total Environment Building Systems (P) Ltd. VS. CCT: 2022 (63) GSTL 257 (SC)** and the Tribunal in the following cases.

(i) KVJ Builders & Developers P. Ltd. vs. CCE: Final Order No.20044/2024 dated 19.1.2024.

(ii) Godrej Properties Ltd. vs. CCT: 2023-TIOL-1016-CESTAT-Bangalore-ST

(iii) Gardencity Realty Pvt. Ltd. vs. CST: Final Order No.21453/2023 dated 22.12.2023.

3.1 Further, he has submitted that from July 2007 onwards, they discharged service tax under the category of 'works contract service' which was denied to them on the ground that they have earlier registered for 'Construction of Complex services' which cannot be the basis, are also covered by the aforesaid judgments.

4. Learned Authorised Representative reiterated the findings of the learned Commissioner.

5. Heard both sides and perused the records.

6. The short question involved in the present appeal is whether the appellants are required to discharge service tax on the services rendered which are in the nature of works contract service during the period 01.02.2006 to 31.03.2008. Undisputedly, for the period July 2007 to March 2008, the appellant had discharged service tax under works contract service. The Hon'ble Supreme Court in the case of **Larsen and Tourbo Ltd.** (supra) observed that for the period prior to 01.06.2007, service tax cannot be leviable on works contract service. This principle has been referred and followed by the Tribunal in the case of **KVJ Builders & Developers** (supra) wherein it observed as:

> "6. We find that the learned Commissioner has confirmed the demand under 'Construction of Complex Services' for the period 16/06/2005 to 31/03/2008 denying the benefit of Notification No.01/0206-ST dated 01/03/2006. It is not in dispute that for the period prior to 01/06/2007, the appellant has rendered construction of complex services, which included both material as well as service components; hence squarely fall under the category of 'Works Contract Service'. Also, during the

course of hearing, the appellant has submitted the VAT returns filed by the appellant during the relevant period under Works Contract Service. In these circumstances, denial of benefit of composite scheme under Works Contract Service w.e.f. 01/06/2007, is bad in law and levy of service tax prior to 01/06/2007. when the services are in the nature of 'Works Contract Service' also cannot be sustained in view of the judgment of 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 in the said case held as follows:-

> "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.
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> 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."

7. Following the aforesaid precedents, we do not find any merit in the impugned order. Consequently, the same is set aside and the appeal is allowed.

(Operative portion of the order was pronounced in
Open Court on conclusion of hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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