# CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

## Service Tax Appeal No. 519 of 2010

(Arising out of Order-in-Original No. 48/2009/ST dated 22.12.2009 passed by the Commissioner of Central Excise, Customs & Service Tax, Cochin)

**Imperial Engineering Company**
Muthoot Towers, M.G. Road
Cochin – 682 035 ................ **Appellant(s)**

**VERSUS**

**Commissioner of Central Excise, Customs and Service Tax, Cochin**
C.R. Building, I.S Press Road
Ernakulam
Cochin – 682 018 .................. **Respondent(s)**

**Appearance:**

Mr. Kuryan Thomas, Advocate for the Appellant.
Mr. Rajiv Kumar Agrawal, Commissioner (AR) for the Respondent.

**Coram:**
**Hon'ble P.A. Augustian, Member (Judicial)**
**Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)**

**Final Order No. 21556 /2024**

Date of Hearing:05.04.2024

Date of Decision: 04.10.2024

**Per: Pullela Nageswara Rao**

The issue in the present appeal is whether the service tax confirmed by the impugned order under the category of 'Erection, Commissiong or Installation Services' on the composite contract undertaken by the appellant is tenable, since it involved composite supply of goods as well as services. The issue pertains to the period 2005-06 to 2007-08.

2. The brief facts are appellant is engaged in the activity of execution of Electrical Contract works like installation of electrical equipment, transformers, etc. Appellant was paying service tax as applicable, after 01.06.2007, appellant started remitting service tax under the 'Works Contract Service', owing to the inclusion of 'Works Contract Service' under the purview of taxation under Finance Act, 1994. Alleging that part of contract for which appellant was remitting Sales Tax/VAT was falling under the category of Service Tax and considering such service under the category of 'Erection, Commissioning or Installation Service, proceedings were initiated and the adjudication authority as per the impugned order, confirmed the demand of service tax along with interest and imposed penalties under the provisions of the Finance Act, 1994. Aggrieved by said order, present appeal is filed before this Tribunal.

3. Learned counsel for the appellant during the hearing submitted that the issue is squarely covered by the judgment of the Hon'ble Supreme Court in the matter of **Commissioner of C. Ex. & Cus., Kerala Vs. Larsen & Toubro Ltd. – 2015 (39) S.T.R. 913 (S.C)**.

4. The learned counsel further drew our attention to the Annual Returns filed under Kerala Value Added Tax Act for the year 2005-06, 2006-07 and 2007-08, evidencing that they have paid VAT on the balance amount. The learned counsel further submitted that the issue is squarely covered by the Final Order of this Tribunal in the matter of **M/s. MFAR Construction Private Limited Final Order No. 20224/2022 dated 05.05.2022 in Appeal No.ST/2388/2011.**

5. Learned counsel also drew our attention to the relevant decisions in the matter of **Daelim Industrial Co. Ltd. Vs. CCE, Vadodara –**

**2006 (3) S.T.R. 124 (Tri.-Del.)** and submitted that invoking the extended period of limitation is unsustainable.

6. The learned Authorised Representative (AR) for the Revenue reiterated the findings in the impugned order. The learned AR further submitted that; the appellant was engaged in the business of Electrical Contract work and trading of electrical goods; they had taken registration under; Erection, Commissioning or installation' services in 2005 and had further added Works Contract service in 2007; investigations revealed that they had not paid /short paid service tax during the period 2005 to 2008; all these projects were ongoing projects; as per Rule 3(3) of Notification 32/2007-ST dated 22.05.2007 and Circular No.98/1/2008-ST dated 04.01.2008, the ongoing projects would continue to remain classifiable under 'Erection, Commissioning or Installation' service and will not be classified under "Works Contract' service: the fact is that the appellants had themselves classified the services as 'erection, commissioning or installation' services; with regard to the ongoing projects, CBIC issued Circular No. 128/10/2010-ST dated 24.08.2010 clarifying the position; Hon'ble Supreme Court in the case of Nagarjuna Constructions - 2012 (28) S.T.R. 561 (SC) has held that:-

> *"28. In the instant case it is an admitted fact that the appellant-assessee had already paid service tax on the basis of classification of works contract which was in force prior to 1st July, 2007. In the circumstances, it cannot be said that the appellant had exercised a particular option with regard to the mode of payment of tax after 1st July, 2007 with regard to reclassified works contract. We are in agreement with the submissions made by the*

*learned counsel appearing for the respondents that not availing of CENVAT credit is absolutely irrelevant in the instant case"*

7. The learned AR further relied on the decision of the Hon'ble Tribunal in the case JMC projects India Vs CCE & ST 2022 (6) TMI 303-Cestat Ahmedabad wherein it is held:-

*"Following the above decision, we are of the considered opinion that for the ongoing projects as on 1-6-2007, if any payment of service tax was made under the respective taxable services, composition scheme would not be available for the same Judgment rendered in Larsen & Toubro Ltd. supra which was relied upon by the Learned Counsel for the appellant is also of no help to the appellant. In the said judgment the question for consideration was whether Service Tax can be levied on individual works contract prior to introduction of the Finance Act, 2007 on 1-6-2007. In the said Judgment it was held that prior to 01.06.2007, the activity in the nature of work contract were not taxable. Whereas the issue involved in the present matter is whether Appellant were entitled to the benefit of the payment of service tax under the composition scheme on ongoing projects. Clearly, case of Larsen & Toubro Ltd. is on different footing and has no relevance to the present case."*

8. The learned AR further submitted that; the Hon'ble Tribunal has discussed the judgement of the Hon'ble Supreme Court in the case of L&T Ltd.,- 2015 (39) STR 913 as well as the Judgement in the case of Nagarjuna Constructions cited above. Therefore, it is submitted that the appellants plea on the basis of L&T judgement is without merits. The appellants did not disclose the correct facts to the department in the ST-3 Returns. They have clearly suppressed the information to avoid paying the due service tax liability and hence the extended period was correctly invoked.

9. Heard both sides and perused the records and considered the submissions of the Learned Counsel and Learned Authorised Representative (AR).

10. In the facts and circumstances of the case and following the decision of the Hon'ble Apex Court in the case of **Larsen & Toubro Ltd**.,(Supra) and the decision of this Tribunal, the composite contract for supply of goods and services is chargeable to service tax only under 'Works Contract' Service from 01.06.2007 and levy under any other category is not tenable prior to and after 01.06.2007. Therefore, the demand of service tax under the category of 'Erection, Commissioning or Installation Services' is unsustainable. Consequently the Appeal is allowed with consequential relief, if any as per law.

(Order pronounced in Open Court on 04.10.2024)

**(P.A Augustian)**
**Member (Judicial)**

**(Pullela Nageswara Rao)**
**Member (Technical)**

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