CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No.974 OF 2011

(Arising out of Order-in-Appeal No.239/2010 dated 18.11.2010
passed by the Commissioner of Central Excise (Appeals),
Mangalore.)

M/s. Mangalore Construction,
D.No.16-1-57/6, Shah's Complex,
Bendorewell, Kankanady,
Mangalore - 575 002.

Appellant(s)

VERSUS

Commissioner of Central Excise,
7th Floor, Trade Centre,
Bunts Hostel Road,
Mangalore - 575 003.

Respondent(s)

WITH

Service Tax Appeal No.25056 OF 2013

(Arising out of Order-in-Appeal No.520/2012 dated 08.10.2012
passed by the Commissioner of Central Excise (Appeals),
Mangalore.)

M/s. Mangalore Construction,
D.No.16-1-57/6, Shah's Complex,
Bendorewell, Kankanady,
Mangalore - 575 002.

Appellant(s)

VERSUS

Commissioner of Central Excise,
7th Floor, Trade Centre,
Bunts Hostel Road,
Mangalore - 575 003

Respondent(s)

APPEARANCE:

Mr. Cherian Punnoose, Advocate for the Appellant

Mr. Neeraj Kumar, Superintendent (AR) for the Respondent

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

Final Order No. 20195 - 20196 /2025

DATE OF HEARING: 17.01.2025
DATE OF DECISION: 17.01.2025

PER : DR. D.M. MISRA

These two appeals are filed against respective Order-in-Appeal passed by the Commissioner of Central Excise (Appeals), Mangalore.

2. Briefly stated the facts of the case are that the appellant are engaged in providing construction services in respect of commercial or industrial building or civil structure. On the basis of audit report, a show-cause notice dt. 29.09.2008 was issued to the appellant for recovery of the service tax amounting to Rs.6,24,351/- for the period 10.09.2004 to 31.03.2007 with interest and penalty. Consequently, the demand was confirmed by the adjudicating authority with interest and penalty. Aggrieved by the said order, they filed appeal before the learned Commissioner(Appeals) who in turn remanded the matter to the adjudicating authority for de novo adjudication for requantification of the demand while upholding the demand in principle on construction service rendered by the appellant. aggrieved by the said order, appeal No.ST/974/2011 was filed. In the de novo proceedings, the adjudicating authority reduced the demand to Rs.3,09,072/- with interest and penalty. Aggrieved by the said order, the appellant approached the learned Commissioner(Appeals) who in turn upheld the said order. Hence, the appeal No.ST/25056/2013.

3. At the outset, the learned advocate for the appellant has submitted that the activity undertaken by the appellant falls under the category of 'Works Contract Service' and not liable to

service tax under the category of 'Commercial or Industrial Construction Service'. He has submitted that in the present case, the works undertaken by the appellant are related to construction activity involving both labour and material. The Department in the show-cause notice acknowledged that the appellant had provided services as well as supplied the materials in execution of the construction undertaken by them. He has submitted that the appellant were registered as contractor with the Karnataka Sales Tax Authorities vide KST No.31328349 and TIN No.29030118675 and also paid sales tax / VAT under the Karnataka Sales Tax Act and Karnataka VAT Act on the activities of construction carried out by them. Therefore, the construction work undertaken by them during the relevant period falls under the category of 'Works Contract'. He has submitted that it is now well settled that service tax prior to 01.06.2007 on Works Contract Service cannot be leviable in view of the judgment of the Hon'ble Supreme Court in the case of CCE &Cus., Kerala Vs. Larsen & Toubro Ltd. [2015(39) STR 913 (SC)]. He has further submitted that this Tribunal, following the aforesaid judgment, in the case of M. Srinagesh Hegde Vs. CCE, Mangaluru [2024(388) ELT 381 (Tri. Bang.)] decided the issue in favour of the assessee. Further, he has submitted that invocation of extended period of limitation in confirmation of demand is untenable in law as no fact was suppressed nor mis-declared to the Department.

4. Learned AR for the Revenue has reiterated the findings of the learned Commissioner(Appeals).

5. Heard both sides and perused the records.

6. The short issue involved in the present appeal for consideration is, whether service tax is leviable on the construction service rendered by the appellant during the period 10.09.2004 to 31.03.2007. It is the contention of the appellant

that during the period, while executing the agreement, they have rendered construction service along with supply of material against a composite contract. Also, they have been registered under Karnataka Sales Tax Act and Karnataka VAT Act and discharged VAT accordingly. It is their contention that levy of service tax on Works Contract Service prior to 01.06.2007 has been held to be not maintainable by the Hon'ble Supreme Court. We find that the issue is clearly covered by the judgment of the Hon'ble Supreme Court in the case of CCE &Cus., Kerala Vs. Larsen & Toubro Ltd. (supra) and Total Environment Building Systems Pvt. Ltd. Vs. DCCT [2022(63) GSTL 257 (SC)]. This Tribunal referring to the said judgments of the Hon'ble Supreme Court, in M. Srinagesh Hegde's case (supra) held as follows:-

> ***8.*** *The Works Contract Service became taxable w.e.f. 1-6-2007 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 1-6-2007, works contract service cannot be subjected to service tax levy by vivisecting the composite service contract, which includes both goods and services. The said judgment has been followed by the Hon'ble Supreme Court in the case of Total Environment Building Systems (P.) Ltd. v. Deputy Commissioner of Commercial Taxes [2022 (63) G.S.T.L. 257 (S.C.) = [2022] 141 taxmann.com 66/[2022] 93 GST 702 (SC)]. Their lordships observed as :*
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> > *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.*

7. Following the aforesaid precedent, we do not find merit in the impugned orders. Consequently, the same are set aside and the appeals are allowed with consequential relief, if any, as per law.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja….