CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 2720 of 2010

(Arising out of Order-in-Original No. 37/2010-ST(Commr.) dated 24.09.2010 passed by the Commissioner of Central Excise, Customs and Service Tax, Thiruvananthapuram.)

B. Murugan,
"Revathy", Pathirapally Lane,
Poojappura,
Thiruvananthapuram – 695 004,
Kerala.

Appellant(s)

VERSUS

The Commissioner of Central Excise, Customs and Service Tax,
ICE Bhavan, Press Club Road,
Tiruvananthapuram – 695 501.

Respondent(s)

APPEARANCE:

Mr. Prasanna Krishnan, Chartered Accountant for the Appellant

Mr. Neeraj Kumar, Authorised Representative for the Respondent

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

Final Order No. 20310 /2025

DATE OF HEARING: 18.09.2024
DATE OF DECISION: 17.03.2025

PER : DR. D.M. MISRA

This is an appeal filed against Order-in-Original No. 37/2010-ST(Commr.) dated 24.09.2010 passed by the Commissioner of Central Excise, Customs and Service Tax, Thiruvananthapuram.

2. Briefly stated the facts of the case are that the appellant are engaged in providing taxable services of construction of retail outlets, construction of sales buildings, etc. for M/s. IOC, BPCL, HPCL, and IBP which involves installation of tank and pump dispensing units connecting them through pipelines etc. during the relevant period January 2005 to March 2008. Alleging that the services rendered by the appellant fall under the taxable category of 'Commercial or Industrial Construction' service, service tax amounting to Rs.1,47,17,911/- was proposed to be recovered along with interest and penalty. On adjudication the demand was reduced to Rs.48,81,371/- with interest and penalty imposed under Section 76, 77 and 78 of the Finance Act, 1994. Hence, the present appeal.

3.1. At the outset, the learned Chartered Accountant for the appellant has submitted that the appellant are Government Contractor executing construction works on Works Contract basis for various public sector units like IOCL, BPCL, IBP, CPWD, Airport Authority of India etc. He submits that the services rendered by the appellant were in the nature of 'Works Contract' service and they are registered with the Kerala Value Added Tax Act, 2003 under the category of Works Contract Service and discharging VAT applicable to Works Contract during the relevant period. In support of the fact that they are rendering Works Contract service, the appellant had referred to Work Order dated 13.02.2008 issued by IOCL for the total value of Rs.3.44 Crores relating to construction of drains, extension of fire hydrant line and other allied works etc. at Irumpanam Terminal, Kochi.

3.2. He has further submitted that in the Work Order read with schedules enclosed therewith, it is clear that the work required to be executed involves both material as well as labour; hence, the services rendered by the appellant during the period in question i.e. from January 2005 to March 2008 was in the nature of works contract service which is held to be non-taxable prior to 01.06.2007 by the Hon'ble Supreme Court in the case of Commissioner of C.EX. and CUS., Kerala Vs. Larsen and Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)]. He has further submitted that this Tribunal in the case of M. Srinagesh Hegde Vs. Commissioner of Central Excise [Final Order No. 20013/2024 dated 01.01.2024 in appeal No.ST/557/2010] referring to the ratio laid down by the Hon'ble Supreme Court in Larsen and Toubro Ltd. (supra) case, decided the issue in favour of the assessee.

4. The Learned AR for the Revenue has 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 construction services rendered under various work orders, which involved supply of materials as well as labour by appellant, liable to service tax for the period January 2005 to March 2008. On-going through the sample agreement with IOC annexed with appeal paper book, we find that the construction works undertaken was in the nature of 'Works Contract Service', since it involves both supply of material as well as labour. Also, we find that the appellant are registered with Kerala VAT Act, 2003 for discharging VAT on works contract service annexed to appeal paper book.

7. We find that 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.
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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.

8. Following the ratio laid down by the Hon'ble Supreme Court in the case of Larsen & Toubro Ltd. (supra) and followed in Total Environment Building Systems (P) Ltd.(supra) case, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 17.03.2025)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

GB/Raja