CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax / Additional Evidence Application No. 20144 of 2025 in Service Appeal No. 269 of 2011
AND
Service Appeal No. 269 of 2011

(Arising out of Order-in-Appeal No. 46/2011 dated 10.01.2011 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.)

M/s. Balaji Constructions
1552, 27th Main, 26th Cross
HSR Layout,
Bangalore – 560 034.

Appellant(s)

VERSUS

The Commissioner of Service Tax
No.16/1, 5th Floor,
S.P. Complex, Lalbagh Road,
Bangalore – 560 027.

Respondent(s)

APPEARANCE:

Shri Cheriyan Punnoose, Advocate for the Appellant

Shri Akshay Kumar, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. P.A. AUGUSTIAN, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20379 / 2025

DATE OF HEARING: 20.03.2025
DATE OF DECISION: 26.03.2025

PER : P.A. AUGUSTIAN

The issue in the present appeal is whether the appellant who had registered under the category of ‘Construction of Residential Complex’ Service is liable to pay service tax for the entire amount for the period from October 2005 to April 2007. Today, the appellant had submitted a Miscellaneous Application for inclusion of additional ground and submits that as per the law laid down by the apex court in the case of **CCE & Cus., Kerala vs. Larsen & Toubro Ltd.** reported in **2015 (39) STR 913 (SC)**, the classification of 'Construction of Residential Complex Service' as claimed by the appellant and assessed by the respondent is unsustainable and the activity is falling under the category of 'works contract service' and appellant is not liable to pay service tax for the relevant period since service tax for the 'works contract service' is not liable to service tax prior to 01.06.2007 as per the judgment of the Hon'ble Supreme Court in the matter of **CCE, Kerala vs. L & T Ltd.** (supra).

2. When the Miscellaneous Application came up for hearing, the learned counsel for the appellant further submits that as per the decision of the Tribunal in the matter of **Gannon Dunkerley & Co. Ltd. vs. CCE & ST (Adjn.), Delhi: 2020 (43) GSTL 183 (Tri.-Del.)**, the issue regarding raising additional grounds on the very same issue was considered by this Tribunal and the Tribunal held that:

> "38. The issue, therefore, is whether the Tribunal should permit the appellant to adduce documents/evidence in support of its plea that the activity carried out by the appellant would fall under the category of works contract', which was not leviable to service tax before 01 June, 2007.
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> 39. It is a fact that there were conflicting decisions, even of Larger Benches, as to whether the activity of the nature contemplated under works contract' would be leviable to service tax prior to 01 June, 2007 and it is only in the year 2015 that the Supreme Court in Larsen and Toubro determined that it would not be leviable to service tax prior to 01 June, 2007.
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> 40. It would, therefore, be appropriate to permit the appellant to raise this issue by way of additional ground and also permit the appellant to produce document / evidence in support thereof, more particularly when there is no restriction in law and indeed none has been pointed out, in raising this plea at this stage."

3. The learned counsel submits that the above matter as similar to the present appeal, the appellant has not raised the issue whether the activities carried out by the appellant are in the nature of works contract service on which no service tax is payable. After considering the provisions, it is held that:

> **"20.** It, therefore, follows that if the appellant has to urge any ground that has not been set forth in the memorandum of appeal, the appellant has to take leave of the Tribunal to urge or be heard on such additional ground. However, the Tribunal in deciding the appeal shall not be confined to the grounds set forth in the memorandum of appeal or those taken by leave of the Tribunal but it would be necessary for the Tribunal, in such a situation, to afford an opportunity to the party who may be affected, to be heard on that ground."

4. The learned Authorised Representative (AR) fairly admits that they have no objection in raising the additional grounds. However, he submits that since the appellant had challenged the finding in the impugned order limited to excess demand of service tax by considering the entire amount as consideration, the classification challenged by the appellant at this stage is unsustainable. However, considering the ratio of the decision of the Tribunal in the matter of **Gannon Dunkerley & Co. Ltd.** (supra) the Miscellaneous Application is allowed.

5. In view of the above discussions, the miscellaneous application filed by the appellant is allowed and the appeal is taken for decision.

6. As regarding merit of the case, the learned counsel submits that the issue no more *res integra*. The issue was settled as per the judgment of the Hon'ble Supreme Court in **CCE & Cus., Kerala vs. Larsen & Toubro Ltd.** (supra). Learned counsel further submits that as per the decision of the Tribunal in the case of **SPL Developers Pvt. Ltd. vs. CCE &**

ST, Bangalore: (2023) 5 Centax 71 (Tri.-Bang.), wherein the held that:

> "14. It is seen from the records that the nature of service provided by the appellant would fall under the works contract service which became taxable w.e.f. 01.06.2007. The Commissioner has recorded a finding that since the appellant had got itself registered under the category of "construction of complex" service and had filed the service tax returns also under "construction of complex" service, it would not be open to the appellant to contend that the services should appropriately be classified under works contract service. This is what has also been contended by the learned authorised representative for the department. This submission cannot be accepted. Mere registration under a particular category and filing service tax returns under the said category would not mean that the appellant has provided service under that category, for in each case it has to be actually ascertained, if a dispute is raised, under which particular category the service would fall. If the service actually falls under works contract service, then mere registration under a different category and payment of service tax under that category would not be sufficient to hold that the service was actually rendered under that category. The reasoning adopted by the Commissioner, therefore, cannot be sustained. The demand of service tax, therefore, would not sustain."

Thus, the objection raised by the learned AR regarding change of classification at this stage of appeal is unsustainable.

6.1 Learned counsel also drew our attention to following decisions in this regard.

- **Total Environment Building Systems Pvt. Ltd. vs. DCCT: 2022 (63) GSTL 257 (SC)**
- **M. Srinagesh Hegde vs. CCE, Mangaluru: 2024 (388) ELT 381 (Tri.-Bang.)**
- **Sconce Global Pvt. Ltd. vs. CST, New Delhi: (2023) 4 Centax 289 (Tri.-Del.)**
- **CST vs. Bhayana Builders (P) Ltd.: 2018 (10) GSTL 118 (SC)**

7. Learned AR reiterating the findings in the impugned order, submits that the appellant had registered under the category of

'Construction of Residential Complex' Service and paid service tax, which was collected from the customers during the relevant period. Since they have considered only 33% of the net consideration towards service tax liability, as per the same the dispute is only about service tax liability of the appellant on the balance amount. Fact being so, reconsidering the entire classification is unsustainable at this belated stage.

8. Heard both sides. It is well settled that service tax on service component of 'works contract' became leviable only with effect from 01.06.2007 and demand of service tax under 'Construction of Residential Complex' Service is unsustainable as per the judgment of the Hon'ble Supreme Court in the matter of **CCE, Kerala vs. L & T Ltd.** (supra). We find that the issue is no more *res integra* and it is well settled law that even if the appellant's activities have been registered under 'Construction of Residential Complex' Service and confirming service tax demand prior to 01.06.2007 is unsustainable. Accordingly, the impugned order is set aside and appeal is allowed.

(Order pronounced in Open Court on 26.03.2025.)

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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