CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 2

Service Tax Appeal No. 626 of 2012

(Arising out of Order-in-Original No.20/2011-ST(Commr.) dated 14.12.2011 passed by the Commissioner of Central Excise and Customs, Thiruvananthapuram.)

M/s. Centre for Development of Advanced Computing
P.B. No.6520,
Vellayambalam,
Trivandrum – 695 033.

Appellant(s)

VERSUS

The Commissioner of Central Excise and Customs
I.C.E Bhavan, Press Club Road,
Thiruvananthapuram – 695 001.

Respondent(s)

APPEARANCE:

Shri Cheriyan Punnoose, Advocate for the Appellant

Mrs. Money Jain, Joint Commissioner, 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. 20964 / 2025

DATE OF HEARING: 25.06.2025
DATE OF DECISION: 25.06.2025

PER : P.A. AUGUSTIAN

The issue in the present appeal is whether the demand of service tax falls under the category of 'Erection, Commissioning or Installation Service' or under 'Works Contract Service'. Alleging that the appellant had caried out the activity under the category of 'Erection, Commissioning or Installation Service' for the period from 29.07.2005 to 08.10.2007 and the show cause notice was issued on 20.10.2010 and the adjudicating authority as per the impugned order confirmed the demand. Aggrieved by said order, present appeal is filed.

2. When the appeal came up for hearing, the learned counsel for the appellant submitted that for any activity to come under the taxable service of 'works contract service' which was introduced w.e.f 01.06.2007 that there should be a transfer of property in goods and the contract should be for the purposes of carrying out any of the identified services. Once these two conditions are satisfied then the activity would fall under the category of 'works contract service' and not under any other category. In the instant case, there is no dispute that all the three works undertaken by the appellant involved procurement, supply, construction, erection, installation and commissioning involving both labour and material and the Commissioner in the impugned order also accepts this fact.

2.1 As regarding the period from 01.06.2007 to 08.10.2007, learned counsel submitted that though the demand is made up to September 2007, as evident from the schedule of payment, considerable part of activities are prior to 01.06.2007 where service tax is not applicable. As regarding the service tax for the period after 01.06.2007 i.e., after introduction of 'works service contract'. Learned counsel submits that the issue stands settled in view of the law laid down by the Hon'ble Supreme Court in the matter of **CCE vs. Larsen & Toubro Ltd.: 2015 (39) STR 913 (SC)** and **Total Environment Building Systems Pvt. Ltd. vs. DCCT: 2022 (63) GSTL 257 (SC)** wherein it was held that appellants were not liable to pay any service tax under the taxable categories of 'Erection, Commissioning or Installation Service' during the period in dispute, therefore, the finding of suppression in the impugned order is legally unsustainable.

2.2 He further placed reliance on the following decision:

- **Sconce Global Pvt. Ltd. vs. CCE, Bangalore: (2023) 4 Centax 289 (Tri.-Del.)**
- **SPL Developers Pvt. Ltd. vs. CCE, Bangalore: (2023) 5 Centax 71 (Tri.-Bang.)**
- **Balaji Constructions vs. CST, Bangalore: Final Order No.FO/ST/A/20379/2025 dated 26.03.2025**

3. Learned Authorised Representative (AR) for the Revenue fairly admits that the activity carried by the appellant falls under the category of 'Works Contract Service'.

4. Heard both sides. The issue is no mor res integra and is covered by series of precedent judgments. This Tribunal in the case of **Balaji Construction** (supra) following the judgment of the Hon'ble Supreme Court in the case of **CCE vs. Larsen & Toubro Ltd.**, held as follows:

> "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."

Following the ratio of the above decisions, the demand confirmed by the adjudicating authority is held as unsustainable. Accordingly, the appeal is allowed with consequential relief, if any, in accordance with law.

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

(P.A. AUGUSTIAN)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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