CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 20183 of 2014

(Arising out of Order-in-Appeal No.566/2013 dated 17.10.2013 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.)

M/s. Fouress Engineering (India) Limited
Plot No.2, Phase II, Peenya Industrial Area,
Bangalore – 560 058. Appellant(s)

VERSUS

The Commissioner of Central Excise
TTMC, BMTC Building,
Domlur, Old Airport Road,
Bangalore – 560 071. Respondent(s)

APPEARANCE:

Shri N. Anand, Advocate for the Appellant.

Shri Vikalp Jain, 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. 22099 / 2025

DATE OF HEARING: 23.12.2025

DATE OF DECISION: 23.12.2025

PER: D.M. MISRA

This appeal is filed against Order-in-Appeal No.566/2013 dated 17.10.2013 passed by the Commissioner of Central Excise (Appeals), Bangalore.

2. Briefly stated the facts of the case are that on the basis of audit, it was alleged that the appellant had wrongly availed cenvat credit on various input services, which are not related to

the output service and also, they have rendered services under the category of 'Erection, Commissioning and Installation' Service but failed to discharge service tax on the same. Consequently, show-cause notice was issued for recovery of cenvat credit of Rs.1,38,172/- and Rs.1,29,457/- with interest and penalty. On adjudication, cenvat credit was denied and demands were confirmed along with interest and penalty. Aggrieved by the said order, they filed an appeal before the learned Commissioner (A). The learned Commissioner (A) partly allowed the appeal and remanded the matter to the original authority to recalculate interest and penalty. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant has submitted that credit availed on input services viz., Foursess Employees Day Event Celebration is squarely covered by the decision of the Hon'ble Karnataka High Court in the case of **Toyota Kirloskar Motor Pvt. Ltd. vs. CCE: 2011 (24) STR 645 (Kar.)**. He further submitted that Advertisement Services which is specifically covered under the definition of 'input service' under Rule 2(l) descried in Cenvat Credit Rules, 2004, therefore, demand of cenvat credit on various input services cannot be sustained. As far as the demand relating to service tax of Rs.1,29,457/-, he has submitted that it relates to service of supply and installation of hot-air and cold-air dampers and cold-air gates for Coal Mills for Maharashtra State Power Generation Company Limited, Parli Thermal Power Station and the said contract is composite one which includes supply of materials and also services. Since the appellant had excluded works contract involving both supply of goods and installation thereof, they have been assessed to works contract under the local Sales Tax and paid VAT. He submits that the issue is covered by the judgment of the Hon'ble Supreme Court in the case of **CCE vs.**

Larsen and Tourbo Limited: 2015 (39) STR 913 (SC) which has been reiterated by the Hon'ble Supreme Court in **Total Environment Building Systems Pvt. Ltd. vs. CCT: 2022 (63) GSTL 257 (SC)**.

3.1 The learned advocate further submits that there is no wilful suppression of facts with intent to evade payment of duty and all the transactions have been duly recorded in the books of accounts and also disclosed in the periodical returns. Further, the entire issue revolves around statutory interpretation and most of the issues has been settled in favour of the appellant. Therefore, in the facts and circumstances, the invocation of extended period of limitation is not justified. In support, he placed reliance on the decisions in the cases of **Cosmic Dye Chemical v. CCE, 19954 (75) ELT 721 (SC)** and **Continental Foundation Joint Venture v. CCE, 2007 (216) ELT 177 (SC)**.

4 The learned Authorised Representative (AR) for the Revenue reiterated the findings of the learned Commissioner (A).

5. Heard both sides and perused the records. We find that the input service viz., Fouress Event Celebration and the Advertisement on which credit has been availed by the appellant and denied by the department is squarely covered by the judgements cited by the learned advocate in the case of **Toyota Kirloskar Motor Pvt. Ltd.** (supra)**.**

6. As far as the demand relating to 'Supply and Installation' service, we find that the appellant has provided material as well as installation service, which is a composite contract and be considered as works contract and not leviable to service tax up to 01.06.2007 in view of the judgment of the Hon'ble Supreme

Court in the case of **CCE vs. Larsen and Tourbo Limited CCE vs. Larsen and Tourbo Limited** (supra) and followed later in **Total Environment Building Systems Pvt. Ltd.** (supra). This Tribunal following the said judgments in the case of **M. Srinagesh Hegde vs. CCE, Mangalore: 2024 (388) E.L.T. 381 (Tri. - Bang.)** observed as:

> **"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. In view of the above, the impugned order is set aside and the appeal is allowed.

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

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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