CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 1872 of 2012

(Arising out of Order-in-Original No.06/2012 ST (Commr.) dated 29.03.2012 passed by the Commissioner of Central Excise, Bangalore-I Commissionerate, Bangalore.)

M/s. Artizen Interiors Pvt. Ltd.
No.3C – 137, 2nd Floor,
2nd Main, 3rd Cross,
Kasturinagar, East of NGEF Layout,
Bangalore – 560 043.

Appellant(s)

VERSUS

The Commissioner of Central Excise
Bangalore-I Commissionerate,
C.R. Building, Queen's Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Shri G. Ganesh. S, Advocate for the Appellant

Shri M. A. Jithendra, Asst. Commissioner (AR) for the Respondent

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

FINAL ORDER NO. 20669 / 2026

DATE OF HEARING: 13.02.2026
DATE OF DECISION: 13.02.2026

PER: R. BHAGYA DEVI

Briefly the facts are the appellant M/s. Artizen Interiors Pvt. Ltd. are into providing taxable services falling under 'Commercial or Industrial Construction Services'. At the time of audit, it was noticed that the work undertaken by the appellant through sub-contractors either with or without supply of materials, the Revenue alleged that the appellant was not eligible for benefit of Notification No. 12/2003 dated 20.06.2003 and hence, they were liable to pay service tax on the gross amount. Accordingly, notice was issued to the appellant. On adjudication, the Commissioner in the impugned order confirms service tax amount of Rs.8,43,88,666/- for the period from October 2005 to March 2008 and for the month of July 2010. Aggrieved by this order, the appellant is in appeal before us.

2. The Learned Counsel submits that the works undertaken by the appellant are in the nature of Works Contract which is liable to be taxed only with effect from 01.06.2007 in view of the decision by the Hon'ble Supreme Court in the case of **Commissioner of C.Ex. & Cus. Kerala Vs. Larsen & Toubro Ltd. 2015 (39) STR 913 (S.C.)**. He further submits that the benefit of Notification No. 12/2003 dated 20.06.2003 which extends abatement on the value of goods cannot be denied, since service tax and sales tax are mutually exclusive. Relies on the decision in the case of **Shobha Developers Ltd. Vs. Commissioner of C.Ex. & Service Tax, Bangalore 2010 (19) STR 75 (Tri.-Bang.)** which was upheld by the Hon'ble Supreme Court in **2017 (49) STR J26 (S.C.)**. Further, it is submitted that there were several communications with the Department seeking clarification and the Department being aware of the fact that the service tax was being discharged excluding the value of the goods based on the returns filed by them, the question of suppression does not arise.

3. The learned Authorised Representative reiterating the findings of the Commissioner in the impugned order submits that the appellant being registered under Commercial or Industrial

Construction Services are liable to pay tax under the said category and are not eligible for the benefit of Notification No. 12/2003 dated 20.06.2003 as is held by the Commissioner in the impugned order.

4. Heard both sides. We find that in the impugned order dated 29.03.2012, the Commissioner had held that for the period prior to 01.06.2007 the meaning of 'Works Contract' as commonly understood is a contract for work and labor, a work contract cannot be different from service contract. He further observes that if your work contract is an invisible service contract whether or not involving use of goods which get consumed or get passed on to service received either as such or intent that service is taxable. The works contract will attract service tax and if the works contract is a composite contract involving sale of goods and one or more services and those services are taxable and service tax will be chargeable on the value of these services. He holds that there is nothing in Section 65(105) and Section 66 of the Finance Act, 1994 from which it can be inferred that the taxable services defined in various clauses of Section 65(105) have to be standalone services and will not attract service tax if they are provided along with other services or providing of the service involves supply of goods on which VAT or sales tax is payable. This very issue came up before the Supreme Court in the case of **Larsen and Toubro** (supra) wherein the Hon'ble Supreme Court observed as follows:

> "**41.** We are afraid that there are several errors in this paragraph. The High Court first correctly holds that in the case of composite works contracts, the service elements should be bifurcated, ascertained and then taxed. The finding that this has, in fact, been done by the Finance Act, 1994 Act is wholly incorrect as it ignores the second *Gannon*

Dunkerley decision of this Court. Further, the finding that Section 67 of the Finance Act, which speaks of "gross amount charged", only speaks of the "gross amount charged" for service provided and not the gross amount of the works contract as a whole from which various deductions have to be made to arrive at the service element in the said contract. We find therefore that this judgment 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 contracts.

42. It remains to consider the argument of Shri Radhakrishnan that post 1994 all indivisible works contracts would be contrary to public policy, being hit by Section 23 of the Indian Contract Act, and hit by *Mcdowell's* case.

43. We need only state that in view of our finding that the said Finance Act lays down no charge or machinery to levy and assess service tax on indivisible composite works contracts, such argument must fail. This is also for the simple reason that there is no subterfuge in entering into composite works contracts containing elements both of transfer of property in goods as well as labour and services.

44. We have been informed by counsel for the revenue that several exemption notifications have been granted *qua* service tax "levied" by the 1994 Finance Act. We may only state that whichever judgments which are in appeal before us and have referred to and dealt with such notifications will have to be disregarded. Since the levy itself of service tax has been found to be non-existent, no question of any exemption would arise. With these observations, these appeals are disposed of."

In view of the above decision, the question of demand of duty prior to 01.06.2007 does and arise. For the period after 01.06.2007, the appellant is eligible for the benefit of abatement on the cost of materials as per Notification 12/2003 dated 20.06.2003 as is held by this Tribunal in the case of **Sobha**

Developers Ltd. (supra) relied upon by the appellant. The Tribunal held as follows:

> "**7.** The mutual exclusivity of service tax and sales tax and the powers to tax assigned by the Constitution to the States and the Centre respectively on sales and services was highlighted by the Apex Court in the *Gujarat Ambuja Cements Ltd.* case (supra). The taxing powers of the Centre and States assigned in the Constitution have been restated by the Apex Court in the judgments cited by SDL. The different Governments viz. Centre and States cannot intrude on the jurisdiction of each other. The decision of the Commissioner to collect service tax on the value on which the appellants had already paid state VAT is contrary to the principles of fiscal federalism adopted in the Constitution. In the circumstances, we find that the impugned demand of differential duty relating to value of materials supplied in the course of provision of construction of commercial or industrial buildings and construction of residential complex services is not sustainable."

5. In view of the above, we do not find any reason to uphold the impugned order and the same is set aside.

Appeal is allowed.

(Operative portion of the order was dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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