

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

**Service Tax Appeal No. 129 Of 2011**

[Arising out of Order-in-Appeal No.15/ST/Apl/DLH-IV/2010 dated 15.11.2010 passed by the Commissioner of Central Excise, Delhi-IV, Faridabad]

**M/s Raj Inter Decor Private Limited**

**: Appellant (s)**

16/5, Mathura Road, Faridabad,  
Haryana

Vs

**The Commissioner of Central Excise,  
And service Tax, Delhi-III**

**: Respondent (s)**

Plot No.36-37, Sector-32,  
Gurgaon, Haryana-122021

**APPEARANCE:**

Shri R.K. Hasija and Mr. Shivang Puri, Advocates for the Appellant  
Shri Shivam Syal, Authorised Representative for the Respondent

**CORAM :**

**HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)**

**HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)**

**FINAL ORDER No.60224/2023**

Date of Hearing:24.07.2023

Date of Decision:27.07.2023

***Per : P.ANJANI KUMAR***

The appellants, M/s Raj Interiors Private Limited, are engaged in civil construction including interiors and wooden furniture; they have registered themselves under "Commercial and Industrial Construction Service" and started paying service tax w.e.f. 16.06.2005; they have been availing abatement of 67%. Revenue, on scrutiny of ST-3 Returns for the period from October 2006 to September 2007, observed that the appellant is not eligible for

Notification No.01/2006. Accordingly, two show-cause notices dated 27.08.2008 and 20.01.2009 were issued. The Original Authority vide OIO dated 30.10.2009 confirmed the demand raised. The Appellate Authority vide Order dated 15.11.2010 held that the Agreement entered into between the appellant and their clients was for renovation and remodelling and was limited to the completion or finishing of the work and therefore, no abatement is available.

2. Learned Counsel for the appellant submits that the work undertaken by the appellant is a composite non-vivisectable work involving service and material; the fact that they have used material to the tune of 80% of the value of the Contract and have paid VAT on the same is not disputed; in fact, they have paid duty after availing 67% abatement whereas they could have paid duty on the 20% of the value of the contract; moreover, in view of the judgment of Hon'ble Apex Court in the case of *L&T- (2016) 1 SCC 170*, composite works could not have been charged duty before 01.06.2007. He also relies upon the following cases:

- *Bajrang Lal Gupta- Service Tax Appeal No.560 of 2011 (CESTAT Chandigarh).*
- *Kumar Builders- Service Tax Appeal No. 1453 of 2010 (CESTAT Chandigarh).*
- *Prime Developers Limited- 2018-TIOL-2867-CESTAT-MAD.*
- *Interarch Building Products Pvt. Ltd. [Civil Appeal No. 11330 of 2018 (SC)]*
- *Total Environment Building Systems Pvt. Ltd.- (2022) SCC Online SC 953.*
- *Pawan Edifice Pvt. Ltd. (Service Tax Appeal No.12106 of 2013 (CESTAT Ahmedabad).*

3. Learned Counsel for the appellants further submits that the demand for the period after 01.06.2007 is also liable to be dropped as the show-cause notice has raised the demand on a wrong service; he relies upon the following cases:

- *Diebold Systems (P) Ltd.- 2008 (9) STR 546 (Tri. Chennai).*
- *URC Construction (P) Ltd.- 2017 (50) STR 147 (Tri. Chennai).*
- *National Building Construction Corporation Ltd.- 2022 (66) GSTL 476 (Tri. Kolkata).*

4. Learned Counsel submits that even if it is held that the service provided by the appellants is classifiable under "Commercial and Industrial Construction Service", the benefit of Notification No.12/2003 dated 20.06.2003 is available. He submits that the show-cause notice dated 27.08.2008 is time barred as the appellants have been regularly filing the ST-3 Returns and the last Return was filed on 25.04.2007; moreover, the issue being settled by the Hon'ble Supreme Court in 2015, there were sufficient reasons for the appellant to have a different opinion than held by the Revenue; for issues relating to interpretation, no extended period can be invoked. He submits that no penalty can be imposed as the issue involves interpretation of law. He relies upon *Uniflex Cables Ltd.- 2011 (271) ELT 161 (SC)* and *CST Vs Vijay Television (P) Ltd.- C.M.A. No. 3292 of 2009 (Madras HC)*

5. Learned Authorized Representative for the Department reiterates the findings of OIO and submits that the appellants have themselves registered under "Commercial and Industrial Construction

Service” and accordingly, show-cause notice was issued denying the abatement as the appellants did not submit any proof regarding the involvement of material in the contract; the issue is not about the taxability of the service but is about applicability of the exemption Notification; therefore, the arguments of the appellant have no relevance. He further submits that the appellants are not eligible for Notification No.12/2003 as they have not fulfilled the conditions laid down in the notification; the view taken by the Adjudicating Authority is supported by Circular No.80/10/2004-ST dated 17.09.2014; Tribunal vide Order dated 12.10.2011 referred to the judgment of the Larger Bench in the case of *M/s Agarwal Colour Advance Photosystems and others* which held that: “the Notification No.12/2003 is not available to the appellants”.

6. Heard both sides and perused the records of the case. The main contention of the appellant is that they are rendering composite services and as such, they are covered by the judgment of Hon’ble Apex Court in the case of L& T (supra). We find that the case of the appellants is squarely covered by the said judgment of the Hon’ble Apex Court as it is not in dispute that the service rendered by the appellant is under a composite contract and it is also not denied that material was not the part of service. We find that this Bench in the case of very same appellant vide Final Order No.62195-62197/2018 held that:

*"5. Heard the parties, considered the submissions. On careful consideration of the submissions made by both sides, we find that it is not disputed that appellant is executing the works of finishing assigned to them*

*along with material. Therefore, in terms of the decision of Hon'ble Apex Court in Larsen & Toubro Limited (supra) merits classification of the services rendered by the appellant under Works Contract services for prior period or the subsequent period. As the services of Works Contract became taxable with effect from 01.06.2007, therefore, the demands pertaining to prior to 01.06.2007 are not sustainable.*

*For the period post 01.06.2007, as it is been held that services merit classification under Works Contract services and it is not disputed that appellant is providing services along with material, in that circumstance, the appellant is entitled for abatement of 67% of the value of taxable services and for remaining 33% value of the service, the appellant is paying service tax. Therefore, on the gross value of services provided by the appellant, are not taxable, in terms of the decision of the Hon'ble Apex Court in the case of Larsen & Toubro Limited (supra)*

*We further take note of the fact that, in Appeal No. ST/58235/2013, for the period October 2007 to March 2009, the show cause notices have been issued to the appellant by invoking extended period of limitation. As on the same issue, earlier also the show cause notice was issued to the appellant for the prior period, in that circumstance, in the light of the decision of Hon'ble Apex Court in the case of Nizam Sugar Factory (supra) the show cause notice is barred by limitation. Therefore, on that ground also the demand is not sustainable against the appellant."*

7. It can be seen from the above that the Tribunal has already held that the appellants are not required to pay service tax on the services rendered by them either before or after 01.06.2007. Though, this decision has been rendered in respect of another branch of the appellant, facts of the case being identical, the ratio of the same requires to be followed. In view of the above, we are of the considered opinion that the appellants have rendered service under a composite contract and as such are not liable to pay service tax for

the period before 01.06.2007; the demand for the subsequent period i.e. after 01.06.2007 cannot also be sustained having been raised under a wrong Head. During the course of the arguments, learned Counsel for the appellants submits that whereas the value of the material involved is 80%, they have availed benefit of only 67% rebate and have paid duty on 33% whereas they could have paid duty on 20% of the contract value; learned Counsel fairly submits that they are not seeking refund of the excess tax they have paid. Under the circumstances, we find that there is no merit in the contention of the Department and the appellant's contention has considerable force.

8. In the result, the appeal is allowed.

*(Pronounced in the open Court on 27/07/2023)*

**(S. S. GARG)**  
MEMBER (JUDICIAL)

**(P. ANJANI KUMAR)**  
MEMBER (TECHNICAL)

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