

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 51022 of 2015

[Arising out of Order-in-Original No. LUD-EXCUS-000-COM-065-066-14-15 dated 29.12.2014 passed by the Commissioner of Central Excise, Ludhiana]

M/s Deepak Builders

Near Lodhi Club, Shaheed Bhagat Singh
Nagar, Pakhowal Road, Ludhiana,
Punjab-141013

.....Appellant

VERSUS

**Commissioner of Central Excise and
Service Tax, Ludhiana**

GST Bhawan, F-Block, Rishi Nagar,
Ludhiana, Punjab-141001

.....Respondent

APPEARANCE:

Shri K.K. Anand and Shri A.K. Prasad, Advocates for the Appellant

Shri Siddharth Jaiswal and Shri Aneesh Dewan, Authorized Representatives
for the Respondent

WITH

Service Tax Appeal No.51698 of 2015

[Arising out of Order-in-Original No. LUD-EXCUS-000-COM-065-066-14-15 dated 29.12.2014 passed by the Commissioner of Central Excise, Ludhiana]

**Commissioner of Central Excise and
Service Tax, Ludhiana**

GST Bhawan, F-Block, Rishi Nagar,
Ludhiana, Punjab-141001

.....Appellant

VERSUS

M/s Deepak Builders

Near Lodhi Club, Shaheed Bhagat Singh
Nagar, Pakhowal Road, Ludhiana,
Punjab-141013

.....Respondent

APPEARANCE:

Shri Siddharth Jaiswal and Shri Aneesh Dewan, Authorized Representatives
for the Appellant

Shri K.K. Anand and Shri A.K. Prasad, Advocates for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO.60690-60691/2024

DATE OF HEARING: 06.09.2024

DATE OF DECISION: 20.12.2024

P. ANJANI KUMAR

These two appeals against the impugned Order-In-Original dated 26.12.2014 are filed by the appellants (ST/51022/2015) and Revenue (ST/51698/2015).

2. Brief facts of the case are that the appellants, M/s Deepak Builders, had been allotted contracts for construction of commercial/residential complexes from time to time by Government /Civil authorities and public agencies. Based on intelligence received about nonpayment of due Service tax by some contractors, investigations were initiated against the appellant. During investigation, statement dated 11.03.2011 of Shri Ashok Kumar, authorized signatory of the appellants, was recorded; 101it appeared that the appellant had undertaken the construction of 22 projects / works of various departments, civic authorities / agencies etc on the basis of tenders awarded, during 10.09.2004 to 31.03.2010; out of 22 projects, 14 were non-commercial and were, therefore, not liable

to service tax; out of the remaining 8 projects, appellants paid Service Tax of Rs. 1,82,75,425 on the 5 projects, for a taxable value of Rs. 16,60,09,504 (after abatement of 67% on gross amount of Rs.50,30,59,103); appellants did not discharge the service tax liability of Rs.88,25,187/- against the 3 projects/works namely Construction of 1 to 120 No. LIG Flats at Mall Mandi Scheme at Amritsar, Construction of Zonal Office Building of Punjab National Bank, Ferozepur Road, Ludhiana and Construction of Double Storeyed Shopping Complex in Mall Mandi, Amritsar on the taxable value of Rs.7,44,03,462/- (after abatement of @ 67% on gross amount received, i.e. Rs.22,54,65,037). A show cause notice dated 21.04.2011 was issued to the appellants alleging short payment of service tax amounting to Rs.88,25,187, invoking extended period of limitation under section 73(1) of the Act, along with interest under Section 75 of the Act; penalties under Section 76, 77 and 78 of the Act were also proposed.

3. Audit of the records/accounts of the appellant, for the period 2007-08 to 2010-11, was conducted, on 04.10.2011 & 05.10.2011; figures provided in Balance Sheets/ Bank accounts were tallied with ST-3 Returns. It appeared to the Revenue that the appellant had not discharged due service tax of Rs. 17,71,72,143/-, during the period 2007-08 to 2011-12, on 13 projects, under the categories of "Construction Services (Industrial)" & "Construction of Residential Complex Services"; this liability was in addition to Rs.88,25,187/-, already demanded for a part of more or less the same period (09/2004 to 31.03.2010). It also appeared that Shri Ashok Kumar

mis-stated the facts, in his statement 11.03.2011, claiming that they had not discharged Service Tax on the services provided in respect of many of the above said projects treating the same as exempted infrastructure development project of non-commercial nature; the appellants indeed received materials from various service recipients during the 2007-08 to 2010-11, and as the cost of the same not having been included in the gross value of the services provided by the them, they were not eligible for abatement of 67% as per the Notification No. 1/2006-ST dated 01.03.2006; the appellants had not declared to the Department, an amount of Rs.3,00,00,000/-, which was admitted to the Income Tax Department. Accordingly, a show cause notice dated 23.10.2012, covering the period from 2007-08 to 31.03.2012, was issued proposing recovery of short/not paid service tax of Rs 21,31,44,202/-, during the period 2007-08 to 2011-12, along with interest by invoking extended period of limitation; penalties under Section 76, 77 and 78 were also proposed.

4. Both the show cause notices dated 21.04.2011 and 23.10.2012 were adjudicated by the commissioner vide impugned Order-In-Original dated 26.12.2014.

4.1. In respect of Show Cause Notice dated 21.04.2011, adjudicating authority Confirmed demand of Rs.51,02,914 after allowing benefit of cum-duty; dropped demand of Rs.31,24,398, holding that the service tax had already been paid by the main contractor; dropped the balance demand of Rs.697 holding the same to be beyond 5 years period; directed the appellant to pay an amount as per section 70 of

the Act; imposed penalty of Rs.200/- per day under Section 77 of the Act and imposed penalty of Rs.51,02,914/- under Section 78 of the Act.

4.2. The adjudicating authority dropped the proceedings, in respect of show cause notice dated 23.12.2012, holding that the demand of Rs.3,59,72,059/- is not sustainable on merits and that the remaining demand Rs. 17,71,72,143/- is hit by limitation; observed that as per settled legal position, extended period of limitation was not invocable in the subsequent show cause as held in Nizam Sugar Factory VS CCE, AP [2006 (197) ELT465(SC)];period of 2007-08 to 2009- 10 overlapped in both the notices.

4.3. The appellant is in appeal (ST/51022/2015) against the amount confirmed by the adjudicating authority in respect of two projects namely construction of 1 to 120 No. LIG Flats at Mall Mandi Scheme at Amritsar and Construction of Double Storeyed Shopping Complex in Mall Mandi, Amritsar as proposed in the first Show Cause Notice dated 21.04.2011. Revenue is in appeal (ST/51698/2015) against the dropping of second Show Cause Notice dated 23.12.2012.

5. Shri K.K. Anand, learned counsel for the appellants assisted by Shri A.K. Prasad, argued at length. He submits that in respect of Show Cause Notice dated 21.04.2011 demand was confirmed on three projects/ contracts which relate to the period prior to 01.06.2007; the demand was confirmed under the categories of "Commercial and Industrial Construction Service" and "Construction of Residential Complex Service"; since in all the three projects,

material was supplied by the appellants, the service provided was actually that of "Works Contract Service" which became taxable only w.e.f. 01.06.2007; the appellants are duly registered with VAT Authorities of the State on the material supplied under "Works Contracts" undertaken; Hon'ble Apex Court in the case of Larsen and Toubro – 2015 (39) STR 913 (SC) held that any service rendered prior to 01.06.2007 along with supply or sale of material would not be taxable under any other category prior to 01.06.2007. The decision was followed in the following cases:

- B R Kohli Construction Pvt. Ltd. – 2017 (5) GSTL 182 (Tri. Del.)
- Azad Construction Co. – 2017 (49) STR 77 (Tri. Del.)
- Real Value Promoters Pvt. Ltd. – 2018-TIOL-2867-CESTAT-MAD.
- Final Order No. 50232/2019 in the case of M/s. G.N. Builddev Pvt. Ltd vs. Commissioner of Central Excise, Jaipur-1.
- 2015 (38) STR 1185 (Tri. Mumbai) Abl Infrastructure Pvt Ltd Vs. Commissioner of Central Excise, Nashik.
- 2018-TIOL-2514-CESTAT-Del-Satish Kumar and Company vs. Commissioner of Central Excise and Service Tax, Jaipur
- 2019-TIOL-2593-CESTAT-Mum Commissioner of Central Excise and Service Tax, Raigad, vs. M/s. Satyam Home Makers

6. Learned Counsel further submits that it was incorrect to say that extended period was invokable even in the first show cause notice; there was no suppression of facts as in the year 2008 itself, the appellants have informed the Department that they are providing Construction Services to various departments and the approved rates of contracts did not include service tax. In the first show cause notice, the Adjudicating Authority has correctly allowed deduction for

an amount of Rs.31,24,399/- on account of service tax paid by the implementing agency i.e. M/s Engineering Projects (India) Ltd., in respect of construction of office building of Punjab National Bank, Ludhiana; the project pertains to the year 2006-07 which was even beyond the period of five years; Commissioner correctly relied on the judgment of the Tribunal/ Courts during the relevant period that if the main contractor paid the service tax, the same cannot be demanded again from the sub-contractor. He relies on Jaipuria Infrastructure Developers Pvt. Ltd. – 2014 (36) STR 696 (Tri.) and Urvi Construction- 2010 (17) STR 302 (Tri. Ahmd.). He submits, without prejudice to the above, that out of the 03 projects for which duty was confirmed, 02 projects relate to Amritsar Improvement Trust and are not related to any commerce or industry; as clarified by CBEC vide Circular No.80/2004-ST dated 17.09.2004, no service tax is payable.

7. Coming to the second show cause notice, the dropping of which caused the departmental appeal, learned counsel submits that it was wrongly stated that out of 28 projects undertaken by the appellants, 10 projects were not covered in the first show cause notice dated 21.04.2011; in fact, only 07 were not covered; the data relied upon for the second show cause notice is balance sheets, ledgers and other financial records produced by the appellants to the audit officers and therefore, suppression cannot be alleged. He submits that the adjudicating authority has correctly followed the decision of the Hon'ble Apex Court in the case of Nizam Sugar Factory – 2006 (197) ELT 465 (SC) wherein it was laid down that when all the relevant

facts were in the knowledge of the authorities at the time of issuance of first show cause notice, second show cause notice cannot be issued invoking extended period. As there is no deliberate suppression of any facts with intent to evade payment of duty, the extended period cannot be invoked. He relies on the following cases:

- 2003 (153) ELT 14 (SC) - P & B Pharmaceuticals (P) Ltd Vs. Collector of Central Excise.
- 2004 (164) ELT 236 (SC) ECE Industries Ltd Vs. Commissioner of Central excise, New Delhi.
- 1989 (40) ELT 276 (SC) - Collector of Central Excise Vs. Chemphar Drugs & Liniments.
- 1995 (78) ELT 401 (SC) - Pushpam Pharmaceuticals Company Vs. Collector of C. Ex., Bombay.
- 1995 (75) ELT 721 (SC)-Cosmic Dye Chemical Vs. Collector of Central Excise, Bombay.
- 2005(179) ELT 3 (SC) - Sarabhal M Chemicals Vs. Commissioner of Central Excise, Vadodara.
- 2013 (288) ELT 161 (SC) - Uniworth Textiles Ltd Vs. Commissioner of Central Excise, Raipur.
- 2016 (337) ELT 482 (SC) Commissioner of Central Excise, Jalandhar Vs. Royal Enterprises.
- 2023 (385) ELT 481 (SC) - Commissioner of C. Ex. & Customs Vs. Rollance Industries Limited.

8. Learned counsel submits that when extended period cannot be invoked, demand cannot be sustained on the ground that extended period has been erroneously invoked; in respect of the second show cause notice, demand cannot be sustained for normal period also as held in Syam Spectra Private Limited – Final Order No.56196/2024 dated 31.07.2024 in Service Tax Appeal No.50583 of 2017; Infinity

Infotech Parks Limited – 2014 (36) STR 37 (Cal.) and Alcobex Metals – 2003 (153) ELT 241 (SC).

9. Learned counsel submits that though the Department contends, in their appeal, that the appellants have received material from their clients in some instances; the balance sheet for the year 2011-12 does not show any receipt of material by the appellant from their clients; it was clarified by their letter dated 18.04.2012 to the Department; the Department could not provide any evidence to conclude that the clients have supplied any material in some cases; as held in Dilip Kumar & Company – 2018 (361) ELT 577 (SC) and Marico Industries Ltd. – 2016 (338) ELT 335 (SC), that the burden to prove the tax liability is on the Revenue; in case of ambiguity in taxing statute imposing tax liability, benefit of doubt is to be given to the assessee. Learned counsel also submits that in respect of second show cause notice entire 2010-11 is time barred; abatement of 67% has been wrongly denied for the years 2007-08 to 2010-11; Adjudicating Authority held certain services to be not taxable in the first show cause notice, Revenue cannot contend the same to be taxable in the second show cause notice; all the 10 cases referred to in the departmental appeal relate to infrastructure projects and as such cannot be considered as "Commercial or Industrial Construction Service"; the appellants are eligible for Composition Scheme as per Rule 2A of the Service Tax (Determination of Value) Rules, 2006 or alternatively the benefit of Notification No.01/2006 dated 01.03.2006. He submits that the Committee of Chief Commissioners while reviewing the impugned order Section 35E of the Central Excise Act,

1944 are required to examine all the records of the proceedings; written replies of the appellant and the Chartered Accountant certificate are part of the proceedings; the Committee appears to have not examine them as there is no acceptance of the records are controverting of the same with reasons.

10. Shri Siddharth Jaiswal, learned Authorized Representative for the Department, assisted by Shri Aneesh Dewan, submits in respect of the appeal filed by the appellant that the Adjudicating Authority has rightly observed that even before 01.06.2007, composite contracts are taxable under the category of "Commercial or Industrial Construction Service"; CBEC vide Circular No.345/6/2007-TRU dated 04.01.2008 clarified that vivisecting a single composite service and classifying the same under two different taxable services was not legally tenable; the legality of the Circular was upheld by the Hon'ble High Court of Andhra Pradesh in the case of Nagarjuna Construction Co. Ltd. – 2010 (019) STR 0321 (A.P.) and was upheld by Hon'ble Apex Court – 2012 (028) STR 0561 (SC).

10.1. Learned Authorized Representative further submits that Board's Circular No.128/10/2010-ST dated 24.08.2010 clarifies that even if the contract of the party qualifies to be a work contract, it will be taxable under the respective taxable service i.e Construction of Complex Service prior to 01.06.2007; as regards applicability of composite scheme, the material fact would be whether such contracts satisfies the Rule 3 of Works Contract (Composition Scheme For

Payment of Service Tax) Rules, 2007; the Adjudicating Authority rightly denied the Composition Scheme for ongoing projects as the appellant has not exercised the option.

10.2. Learned Authorized Representative submits that it is not correct to say that the three projects on which service tax confirmed were undertaken for State Government authority and thus for a non-commercial organization and therefore, are exempt; in terms of Board's Circular No.80/10/2004-ST dated 17.09.2004, there was no ambiguity that even if a part of the building is used for commercial service, the same shall be taxable.

10.3. Learned Authorized Representative submits that it was incorrect for the Adjudicating Authority to hold that when the main contractor discharged duty liability, the sub-contractor need not pay service tax; it has been held by Tribunal in the case of Sunil Hi-Tech Engineers Ltd. – 2014 (36) STR 408 that whosoever provides taxable service, is liable to pay tax.

11. In respect of the departmental appeal, as far as the limitation is concerned, learned Authorized Representative submits that SCN dated 21.04.2011 covered the period 09/2004 to 31.03.2010 and the second SCN dated 23.10.2011 covered the period 2007-08 to 2011-12; the period 01.04.2010 to 31.03.2012 was not covered in the first SCN; for the period October 2010 to March 2011, the extended period of limitation could be construed to have been evoked at all in

subsequent SCNs dated 23.10.2011; the same is within normal time; the Adjudicating Authority erred in dropping the demand for this normal period; out of the 28 projects, 10 projects were not part of this Show Cause Notice dated 21.04.2011; the Adjudicating Authority wrongly relied upon the case of Nizam Sugar Factory (supra) and failed to take cognizance of the decision of the Tribunal in the case of M.M Cylinders (P) Ltd. – 2012 (277) ELT 78 (Tri. Bang.); the same was upheld by the Hon'ble Supreme Court – 2014 (302) ELT A28 (SC) saying that Show Cause Notice issued for subsequent period not based on identical facts or evidences as in the case of first Show Cause Notice; he relies on the decision of the Hon'ble Gujarat High Court in the case of Neminath Fabrics Pvt. Ltd. – 2010 (256) ELT 369 (Guj.)

12. Heard both sides and perused the records of the case. In respect of the appeal filed by the appellant i.e. ST/51022/2015, we find that the contention of the appellant is that the work undertaken by them was of non-commercial nature and in view of the Board's Circular No.80/2004-ST dated 17.09.2004, such contracts are not exigible to service tax. We find that the said Board's Circular clarifies as follows:

13. Construction services (commercial and industrial buildings or civil structures):

13.1 Services provided by a commercial concern in relation to construction, repairs, alteration or restoration of such buildings, civil structures or parts thereof which are used, occupied or engaged for the purposes of commerce and industry are covered under this new levy. In this case the service is essentially provided to a person who gets such constructions etc. done, by a building or civil

contractor. Estate builders who construct buildings/civil structures for themselves (for their own use, renting it out or for selling it subsequently) are not taxable service providers. However, if such real estate owners hire contractor/contractors, the payment made to such contractor would be subjected to service tax under this head. The tax is limited only in case the service is provided by a commercial concern. Thus service provided by a labourer engaged directly by the property owner or a contractor who does not have a business establishment would not be subject to service tax.

13.2 The leviability of service tax would depend primarily upon whether the building or civil structure is 'used, or to be used' for commerce or industry. The information about this has to be gathered from the approved plan of the building or civil construction. Such constructions which are for the use of organizations or institutions being established solely for educational, religious, charitable, health, sanitation or philanthropic purposes and not for the purposes of profit are not taxable, being non-commercial in nature. Generally, government buildings or civil constructions are used for residential, office purposes or for providing civic amenities. Thus, normally government constructions would not be taxable. However, if such constructions are for commercial purposes like local government bodies getting shops constructed for letting them out, such activity would be commercial and builders would be subjected to service tax.

13.3 In case of multi-purpose buildings such as residential-cum-commercial construction, tax would be leviable in case such immovable property is treated as a commercial property under the local/municipal laws.

13.4 The definition of service specifically excludes construction of roads, airports, railway, transport terminals, bridge, tunnel, long distance pipelines and dams. In this regard it is clarified that any pipeline other than those running within an industrial and commercial establishment such as a factory, refinery and similar industrial establishments are long distance pipelines. Thus, construction of pipeline running within such an industrial and commercial establishment is within the scope of the levy.

13.5 The gross value charged by the building contractors include the material cost, namely, the cost of cement, steel, fittings and fixtures, tiles etc. Under the Cenvat Credit Rules, 2004, the service provider can take credit of excise duty paid on such inputs. However, it has been pointed out that these materials are normally procured from the market and are not covered under the duty paying documents. Further, a general exemption is available to goods sold during the course of providing service (Notification No. 12/2003-S.T.) but the exemption is subject to the condition of availability of documentary proof specially indicating the value of the goods sold. In case of a composite contract, bifurcation of value of goods sold is often difficult. Considering these facts, an abatement of 67% has been provided in case of composite contracts where the gross amount charged includes the value of material cost. (*refer Notification No. 15/2004-S.T., dated 10-9-2004*). This would, however, be optional subject to the condition that no credit of input goods, capital goods and no benefit (under Notification No. 12/2003-S.T.) of exemption towards cost of goods are availed.

13. The above Circular clarifies that leviability of service tax would depend primarily upon whether the building or civil structure is used or to be used for commerce or industry; while the appellants claim that it is for non-commercial purposes, Revenue alleges that these projects were undertaken for a State Government Authority i.e. Amritsar Improvement Trust, which was registered as Government Public Charitable Trust and therefore, the projects can be construed to be for commercial purpose as the construction was of a residential complex. Neither the SCN nor the impugned order make it clear as to how a residential complex would be for commercial or industrial purpose.

14. Learned Counsel for the appellants further submits that the work undertaken by them is composite works contract involving service and material component and none of their service recipient supplied the material free of cost; they have registered themselves with VAT authorities and have discharged applicable VAT/ Sales Tax. He submits that in view of the judgement of Hon'ble Supreme Court in the case of *Larsen & Tubro* – 2015 (39) STR 913 (SC) when the service of construction is provided along with material, the service would fall under a distinct category of service called "Works Contract", which came into existence w.e.f. 01.06.2007, classifiable under Heading 65(105)(zzzza) and any service rendered along with material before 01.06.2007 would not be taxable under any other Heading. We find that Hon'ble Apex Court held in the above case as under:

17. We find that the assesseees are correct in their submission that a works contract is a separate species of contract distinct from contracts for services simpliciter recognized by the world of commerce and law as such, and has to be taxed separately as such. In *Gannon Dunkerley*, 1959 SCR 379, this Court recognized works contracts as a separate species of contract as follows:-

"To avoid misconception, it must be stated that the above conclusion has reference to works contracts, which are entire and indivisible, as the contracts of the respondents have been held by the learned Judges of the Court below to be. The several forms which such kinds of contracts can assume are set out in *Hudson on Building Contracts*, at p. 165. It is possible that the parties might enter into distinct and separate contracts, one for the transfer of materials for money consideration, and the other for payment of remuneration for services and for work done. In such a case, there are really two agreements, though there is a single instrument embodying them, and the power of the State to separate the

agreement to sell, from the agreement to do work and render service and to impose a tax thereon cannot be questioned, and will stand untouched by the present judgment." (at page 427)

18. Similarly, in *Kone Elevator India (P) Ltd. v. State of T.N.* - (2014) 7 SCC 1 = [2014 \(34\) S.T.R. 641](#) (S.C.) = [2014 \(304\) E.L.T. 3](#) (S.C.), this Court held :-

"Coming to the stand and stance of the State of Haryana, as put forth by Mr. Mishra, the same suffers from two basic fallacies, first, the supply and installation of lift treating it as a contract for sale on the basis of the overwhelming component test, because there is a stipulation in the contract that the customer is obliged to undertake the work of civil construction and the bulk of the material used in construction belongs to the manufacturer, is not correct, as the subsequent discussion would show; and second, the Notification dated 17-5-2010 issued by the Government of Haryana, Excise and Taxation Department, whereby certain rules of the Haryana Value Added Tax Rules, 2003 have been amended and a table has been annexed providing for "Percentages for Works Contract and Job Works" under the heading "Labour, service and other like charges as percentage of total value of the contract" specifying 15% for fabrication and installation of elevators (lifts) and escalators, is self-contradictory, for once it is treated as a composite contract invoking labour and service, as a natural corollary, it would be works contract and not a contract for sale. To elaborate, the submission that the element of labour and service can be deducted from the total contract value without treating the composite contract as a works contract is absolutely fallacious. In fact, it is an innovative subterfuge. We are inclined to think so as it would be frustrating the constitutional provision and, accordingly, we unhesitatingly repel the same." (at para 60)

19. In *Larsen & Toubro Ltd. v. State of Karnataka*, (2014) 1 SCC 708 = [2014 \(34\) S.T.R. 481](#) (S.C.) = [2014 \(303\) E.L.T. 3](#) (S.C.), this Court stated :-

"In our opinion, the term "works contract" in Article 366(29-A)(b) is amply wide and cannot be confined to a particular understanding of the term or to a particular form. The term encompasses a wide range and many varieties of contract. Parliament had such wide meaning of "works

contract" in its view at the time of the Forty-sixth Amendment. The object of insertion of clause (29-A) in Article 366 was to enlarge the scope of the expression "tax on sale or purchase of goods" and overcome *Gannon Dunkerley (1)* [*State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd.*, AIR 1958 SC 560 : 1959 SCR 379]. Seen thus, even if in a contract, besides the obligations of supply of goods and materials and performance of labour and services, some additional obligations are imposed, such contract does not cease to be works contract. The additional obligations in the contract would not alter the nature of contract so long as the contract provides for a contract for works and satisfies the primary description of works contract. Once the characteristics or elements of works contract are satisfied in a contract then irrespective of additional obligations, such contract would be covered by the term "works contract". Nothing in Article 366(29-A)(b) limits the term "works contract" to contract for labour and service only. The learned Advocate General for Maharashtra was right in his submission that the term "works contract" cannot be confined to a contract to provide labour and services but is a contract for undertaking or bringing into existence some "works". We are also in agreement with the submission of Mr. K.N. Bhat that the term "works contract" in Article 366(29-A)(b) takes within its fold all genre of works contract and is not restricted to one specie of contract to provide for labour and services alone. Parliament had all genre of works contract in view when clause (29-A) was inserted in Article 366." (at para 72)

20. We also find that the assessee's argument that there is no charge to tax of works contracts in the Finance Act, 1994 is correct in view of what has been stated above.

21. This Court in *Mathuram Agrawal v. State of M.P.*, (1999) 8 SCC 667, held :-

"Another question that arises for consideration in this connection is whether sub-section (1) of Section 127-A and the proviso to sub-section (2)(b) should be construed together and the annual letting values of all the buildings owned by a person to be taken together for determining the amount to be paid as tax in respect of each building. In our considered view this position cannot be accepted. The intention of the legislature in a taxation statute is to be gathered

from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. *The statute should clearly and unambiguously convey the three components of the tax law i.e. the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter.*

This construction, in our considered view, amounts to supplementing the charging section by including something which the provision does not state. The construction placed on the said provision does not flow from the plain language of the provision. The proviso requires the exempted property to be subjected to tax and for the purpose of valuing that property alone the value of the other properties is to be taken into consideration. But, if in doing so, the said property becomes taxable, the Act does not provide at what rate it would be taxable. One cannot determine the rateable value of the small property by aggregating and adding the value of other properties, and arrive at a figure which is more than possibly the value of the property itself. Moreover, what rate of tax is to be applied to such a property is also not indicated." (at paras 12 and 16)

22. Equally, this Court in *Govind Saran Ganga Saran v. CST*, 1985 Supp SCC 205, held :-

"The components which enter into the concept of a tax are well known. The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy, the second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax, the third is the rate at which the tax is imposed, and the fourth is the measure or value to which the rate will be applied for computing the tax liability.

If those components are not clearly and definitely ascertainable, it is difficult to say that the levy exists in point of law. Any uncertainty or vagueness in the legislative scheme defining any of those components of the levy will be fatal to its validity." (at para 6)

23. To similar effect is this Court's judgment in *CIT v. B.C. Srinivasa Setty*, (1981) 2 SCC 460, held :-

"Section 45 charges the profits or gains arising from the transfer of a capital asset to income tax. The asset must be one which falls within the contemplation of the section. It must bear that quality which brings Section 45 into play. To determine whether the goodwill of a new business is such an asset, it is permissible, as we shall presently show, to refer to certain other sections of the head, "Capital gains". Section 45 is a charging section. For the purpose of imposing the charge. Parliament has enacted detailed provisions in order to compute the profits or gains under that head. No existing principle or provision at variance with them can be applied for determining the chargeable profits and gains. All transactions encompassed by Section 45 must fall under the governance of its computation provisions. *A transaction to which those provisions cannot be applied must be regarded as never intended by Section 45 to be the subject of the charge.* This inference flows from the general arrangement of the provisions in the Income Tax Act, where under each head of income the charging provision is accompanied by a set of provisions for computing the income subject to that charge. The character of the computation provisions in each case bears a relationship to the nature of the charge. *Thus the charging section and the computation provisions together constitute an integrated code.* When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section. Otherwise one would be driven to conclude that while a certain income seems to fall within the charging section there is no scheme of computation for quantifying it. The legislative pattern discernible in the Act is against such a conclusion. It must be borne in mind that the legislative intent is presumed to run uniformly through the entire conspectus of provisions pertaining to each head of income. No doubt there

is a qualitative difference between the charging provision and a computation provision. And ordinarily the operation of the charging provision cannot be affected by the construction of a particular computation provision. But the question here is whether it is possible to apply the computation provision at all if a certain interpretation is pressed on the charging provision. That pertains to the fundamental integrality of the statutory scheme provided for each head." (at para 10)

24. A close look at the Finance Act, 1994 would show that the five taxable services referred to in the charging Section 65(105) would refer only to service contracts simpliciter and not to composite works contracts. This is clear from the very language of Section 65(105) which defines "taxable service" as "*any service provided*". All the services referred to in the said sub-clauses are service contracts simpliciter without any other element in them, such as for example, a service contract which is a commissioning and installation, or erection, commissioning and installation contract. Further, under Section 67, as has been pointed out above, the value of a taxable service is the gross amount charged by the service provider for such service rendered by him. This would unmistakably show that what is referred to in the charging provision is the taxation of service contracts simpliciter and not composite works contracts, such as are contained on the facts of the present cases. It will also be noticed that no attempt to remove the non-service elements from the composite works contracts has been made by any of the aforesaid Sections by deducting from the gross value of the works contract the value of property in goods transferred in the execution of a works contract.

25. In fact, by way of contrast, Section 67 post amendment (by the Finance Act, 2006) for the first time prescribes, in cases like the present, where the provision of service is for a consideration which is not ascertainable, to be the amount as may be determined in the prescribed manner.

15. In view of the above, we are of the considered opinion that the works undertaken by the appellants are "Works Contract" as defined

under Heading 65(105)(zzzza) and are taxable only w.e.f. 01.06.2007. This being the position, argument of the Department that the projects were not of commercial nature would not be of any help. We find that Hon'ble Courts and the Tribunals have been continuously holding that such contracts involving service and material components are taxable only from 01.06.2007. We find that learned Counsel for the appellants has rightly relied upon the following cases:

- B R Kohli Construction Pvt. Ltd. – 2017 (5) GSTL 182 (Tri. Del.)
- Azad Construction Co. – 2017 (49) STR 77 (Tri. Del.)
- Real Value Promoters Pvt. Ltd. – 2018-TIOL-2867-CESTAT-MAD.
- Final Order No. 50232/2019 in the case of M/s. G.N. Build Pvt. Ltd vs. Commissioner of Central Excise, Jaipur-1.
- 2015 (38) STR 1185 (Tri. Mumbai) Abl Infrastructure Pvt Ltd Vs. Commissioner of Central Excise, Nashik.
- 2018-TIOL-2514-CESTAT-Del-Satish Kumar and Company vs. Commissioner of Central Excise and Service Tax, Jaipur
- 2019-TIOL-2593-CESTAT-Mum Commissioner of Central Excise and Service Tax, Raigad, vs. M/s. Satyam Home Makers

16. Learned Authorized Representative for the Department submits that even if the ongoing projects be treated as "Works Contract" w.e.f. 01.06.2007, in view of the Board's Circular No.128/10/2010-ST dated 24.08.2010, the appellant having not opted for the Works Contract Composition Scheme, the benefit cannot be extended from 01.06.2007. We find that filing of a letter indicating the option is procedural in nature and non-opting for the Composition Scheme in a

formal manner does not take away the substantial rights of the appellants.

17. In the first show cause notice, the Adjudicating Authority has correctly allowed deduction for an amount of Rs.31,24,399/- on account of service tax paid by the implementing agency i.e. M/s Engineering Projects (India) Ltd., in respect of construction of office building of Punjab National Bank, Ludhiana; the project pertains to the year 2006-07 which was even beyond the period of five years; Commissioner correctly relied on the judgment of the Tribunal/ Courts during the relevant period that if the main contractor paid the service tax, the same cannot be demanded again from the sub-contractor. He relies on Jaipuria Infrastructure Developers Pvt. Ltd. – 2014 (36) STR 696 (Tri.) and Urvi Construction- 2010 (17) STR 302 (Tri. Ahmd.). He submits, without prejudice to the above, that out of the 03 projects for which duty was confirmed, 02 projects relate to Amritsar Improvement Trust and are not related to any commerce or industry; as clarified by CBEC vide Circular No.80/2004-ST dated 17.09.2004, no service tax is payable. In view of the above, we find that demand of Rs.51,02,914/- confirmed against the appellants in respect of Show Cause Notice dated 21.04.2011 for the period 10.09.2004 to 31.03.2010 is not sustainable. Appeal No. ST/51022/2015 is liable to be allowed.

18. Coming to the second Show Cause Notice dated 23.10.2012, learned Counsel for the appellants submits that Show Cause Notices dated 21.04.2011 and 23.10.2012 invoked extended period of

limitation and as held by the Hon'ble Apex Court in the case of Nizam Sugar Factory (supra), when all the relevant facts were in the knowledge of the authorities, when the first Show Cause Notice was issued; therefore, while issuing second and third Show Cause Notice, same/ similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. Learned Authorized Representative, on the other hand, submits that the adjudicating authority wrongly relied on the case of Nizam Sugar Factory (supra) as some of the projects were not covered in the first demand dated 21.04.2011. We find that such a submission is against the spirit of the judgment in the case of Nizam Sugar Factory (supra).

9. Allegation of suppression of facts against the appellant cannot be sustained. When the first SCN was issued all the relevant facts were in the knowledge of the authorities. Later on, while issuing the second and third show cause notices the same/similar facts could not be taken as suppression of facts on the part of the assessee as these facts were already in the knowledge of the authorities. We agree with the view taken in the aforesaid judgments and respectfully following the same, hold that there was no suppression of facts on the part of the assessee/appellant.

10. For the reasons stated above, Civil Appeal Nos. 2747 of 2001 and Civil Appeal No. 6261 of 2003 filed by the assesseees are accepted and the impugned orders are set aside on the question of limitation only. The demands raised against them as well as the penalty, if any, are dropped. Civil Appeals @ Special Leave Petition (C) Nos. 9271-9278 of 2003 filed by the department are dismissed. Questions of classification and marketability are left open. Parties shall bear their own costs.

19. We find that the first Show Cause Notice covered the period of 10.09.2004 to 31.03.2010 and the second Show Cause Notice covered the period 2007-08 to 2011-12. Revenue has erred not only in issuing two consecutive Show Cause Notices invoking the extended period but also covered a period which was common to both the Show Cause Notices. No particular suppression of facts etc. with intent to evade payment of duty has been evidenced against the appellants. Learned Counsel submits that it was incorrect to say that extended period was invokable even in the first show cause notice; there was no suppression of facts as in the year 2008 itself, the appellants have informed the Department that they are providing Construction Services to various departments and the approved rates of contracts did not include service tax. We find that following the ratio of the judgment in the case of Nizam Sugar Factory (supra) extended period cannot be invoked and to that extent, we find that learned Commissioner has rightly dropped the proceedings initiated vide Show Cause Notice dated 23.10.2012. We also find strength from the ratio of the following cases:

- B R Kohli Construction Pvt. Ltd. – 2017 (5) GSTL 182 (Tri. Del.)
- Azad Construction Co. – 2017 (49) STR 77 (Tri. Del.)
- Real Value Promoters Pvt. Ltd. – 2018-TIOL-2867-CESTAT-MAD.
- Final Order No. 50232/2019 in the case of M/s. G.N. Builddev Pvt. Ltd vs. Commissioner of Central Excise, Jaipur-1.
- 2015 (38) STR 1185 (Tri. Mumbai) Abl Infrastructure Pvt Ltd Vs. Commissioner of Central Excise, Nashik.
- 2018-TIOL-2514-CESTAT-Del-Satish Kumar and Company vs. Commissioner of Central Excise and Service Tax, Jaipur

- 2019-TIOL-2593-CESTAT-Mum
Commissioner of Central Excise and Service
Tax, Raigad, vs. M/s. Satyam Home Makers

20. In view of the above, appeal No. ST/51022/2015 filed by the appellants is allowed and appeal No. ST/51698/2015 filed by the Revenue is dismissed.

(Order pronounced in the open court on 20/12/2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

PK