CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 52143 of 2015

[Arising out of Order-in-Appeal No. LUD-EXCUS-000-APP-352-14-15 dated 04.03.2015 passed by the Commissioner (Appeals), CE & Cus., Chandigarh]

M/s Deepak Singhal Engineers & Builders Pvt Ltd ……Appellant
Near Lodhi Club, Shaheed Bhagat Singh Nagar,
Ludhiana, Punjab 141013

VERSUS

Commissioner of Central Excise and Service Tax, Ludhiana ……Respondent
GST Bhawan, F Block, Rishi Nagar,
Ludhiana, Punjab 141001

APPEARANCE:

Mr. A.K. Prasad, Advocate for the Appellant

Mr. Shantanu Kumar Meena, Authorized Representative for the Respondent

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

FINAL ORDER NO. 61779/2025

DATE OF HEARING: 18.09.2025
DATE OF DECISION: 18.12.2025

S. S. GARG :

The present appeal is directed against impugned order dated 04.03.2015 passed by the Commissioner (Appeals), Central Excise & Customs, Chandigarh, whereby the learned Commissioner (Appeals) has confirmed the demand of service tax alongwith interest and has also imposed penalties under Sections 77 & 78 of the Finance Act,

1994, however, has dropped the penalty under Section 76 of the Act.

2. Briefly stated facts of the present case are that the Appellant are engaged in the construction business and were registered with the service tax department w.e.f. 31.03.2010 under the category of 'works contract services'. Based on the intelligence, the department initiated inquiries into the construction work undertaken by the Appellant. On scrutiny of the documents/correspondences/ information and the work orders issued by civic authorities/agencies, it was observed that the Appellant were engaged in construction of various projects. Accordingly, the demand of service tax under the category of 'Construction of Residential Complex Services' for the period from 01.10.2005 to 31.03.2010 was raised with regard to following three work orders:

1) Construction of 54 No. HIG (Super) Flats in Shaheed Bhagat Singh Nagar, Ludhiana

2) Construction of 60 No. MIG-II Flats in Sukhdev Enclave Scheme on Hambran Road, Ludhiana

3) Construction of 84 No. LIG Flats in Sukhdev Enclave Scheme on Hambran Road, Ludhiana

On these allegations, a demand-cum-show cause notice dated 18.04.2011 was issued to the Appellant. After following the due process, the Adjudicating Authority vide the Order-in-Original dated 25.10.2011, confirmed the demand of service tax along with interest after giving abatement @67% under Notification No. 1/2006-ST dated 01.03.2006 to raise the demand on service part; penalties

under Sections 76, 77 & 78 of the Act were also imposed. Being aggrieved by the said Order-in-Original, the Appellant filed appeal before the Commissioner (Appeals), who vide the impugned Order-in-Appeal, has upheld the Order-in-Original except the penalty under Section 76 of the Act. Aggrieved by the order of the Commissioner (Appeals), the Appellant have filed the present appeal.

3. Heard both the parties and perused the material on record.

4. The learned Counsel, Mr. A.K. Prasad, appears for the Appellant and submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law.

4.1 He further submits that the three disputed projects cited above, were undertaken by the Appellant by not only supplying the service but also the construction materials and the Appellant had also paid VAT on the materials supplied, hence the service provided by the Appellant was 'works contact service'.

4.2 He further submits that the 'works contract service' has been introduced w.e.f. 01.06.2007 and was not taxable prior thereto. He submits that various Courts have held that once a new service is introduced without any amendment to the previous categories of services, it implies that the said new category of service was not taxable earlier; Courts have also held that prior to introduction of 'work contract service' w.e.f. 01.06.2007, the service categories of 'Commercial and Industrial Service' or 'Construction of Residential Complex Service' refers to only those cases where service simpliciter

was provided and does not refer to those cases where services were provided along with necessary construction materials.

4.3 He further submits that this issue is no more *res integra* and has been settled by the Hon'ble Apex Court in the case of **Commissioner of CE & Cus., Kerala vs. Larsen & Toubro Ltd – 2015 (39) STR 913 (SC)**. He further relies on the following decisions of the Tribunal, involving the similar issue, wherein the Tribunal has settled the issue by following the judgment of Hon'ble Apex Court in Commissioner vs. Larsen & Toubro Ltd (supra)'s case:

- **M/s R E Construction Pvt Ltd vs. CGST, Chennai – 2025-TIOL-1173-CESTAT-Chennai**
- **Raj Inter Decor Pvt Ltd vs. CCE & ST, Delhi-III – (2024) 17 Centax 116 (Tri. Chan.)**
- **Bajrang Lal Gupta vs. CCE, Delhi-III – (2023) 9 Centax 199 (Tri. Chan.)**
- **Ludhiana Builders vs. CCE & ST, Ludhiana – 2020 (37) GSTL 231 (Tri. Chan.)**

5. On the other hand, Mr. Shantanu Kumar Meena, the learned Authorized Representative for the Revenue reiterates the findings of the impugned order and submits that the department though has admitted in the show cause notice that the Appellant completed the projects with materials and accordingly, while computing the service tax liability, exemption for the same @67% has already been granted under Notification No. 1/2006-ST dated 01.03.2006 to raise the demand on service part only and the same has been confirmed by the Adjudicating Authority and further has been upheld by the Commissioner (Appeals) also.

5.1 He further submits that during the disputed period, the Appellant were not registered with the department and had also not filed ST-3 returns as were required under Sections 69 & 70 of the Finance Act.

5.2 He further submits that when the Appellant are now admitting that their activity falls under the 'works contract service' and they have also got themselves registered with the service tax department w.e.f. 31.03.2010 under the category of 'works contract service'; and the department has raised the demand under the wrong service category of 'construction of residential complex services', which is not sustainable in view of the judgment of Hon'ble Supreme Court in Commissioner vs. Larsen & Toubro Ltd (supra)'s case.

5.3 He further submits that the Appellant, despite the above fact, are engaged in providing the 'works contract services' but they did not get themselves registered under the head of 'works contract services' and also did not file ST-3 returns under the right head, therefore, the Appellant are liable for penalty for contravention of Section 70 of the Finance Act and hence, penalty under Section 77 of the Act has rightly been imposed upon the Appellant.

6. We have considered the submissions made by both the parties and perused the material on record. We find that in the show cause notice, the department itself has admitted that the work done by the Appellant falls under the category of 'composite contract' because the same was performed with both the materials and the construction services. Further, we find that this fact has also been

considered by the learned Commissioner in the impugned order and the learned Commissioner has given the benefit of abatement @67% of the gross amount charged and received against the aforesaid projects.

7. We also find that this issue is no more *res integra* and has been settled by the Hon'ble Supreme Court in the case of **Commissioner vs. Larsen & Toubro Ltd** (supra) by making the following observations:

> **"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."

8. Further, we find that the works contract service has been introduced w.e.f. 01.06.2007 and the same was not taxable prior thereto. We also find that introduction of a new entry for the

purpose of levy of tax presupposes that the same was not covered by any of the pre-existing entries.

9. We further find that this Tribunal has considered the identical issue in the case of **Raj Inter Decor Pvt Ltd** (supra), wherein the Tribunal has held as under:

> "**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 1-6-2007, therefore, the demands pertaining to prior to 1-6-2007 are not sustainable.*
> >
> > *For the period post 1-6-2007, 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 1-6-2007. 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 1-6-2007; the demand for the subsequent period *i.e.* after 1-6-2007 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."

10. Further, we may also refer to the decision of this Tribunal in the case of **Bajrang Lal Gupta** (supra), wherein the identical issue was involved and the Tribunal after considering the submissions and ratios of the various decisions, has held as under:

> **"16**. After considering the submissions of both the parties and perusal of material on record and the decisions relied upon by the appellant cited supra, we find that the Hon'ble Apex court

in the case of CCE vs. Larsen & Toubro Limited (supra) has settled the issue relating to works contract service which includes supply of material and labour for consideration and the same is taxable only from 01.06.2007.

17. Further, we find that even for the period after 01.06.2007, various decisions of the Tribunal have consistently held that the composite contract or works contract service even after 01.06.2007 cannot be taxed under Construction of Complex Service under Section 65 (105) (zzh) read with Section 65 (30a) of the Finance Act, 1994.

18. ……

19. Further, we find that in the case of Prime Developers Limited vs. CCE [2018-TIOL-2867-CESTAT-MAD.], the Division Bench of Chennai Tribunal in identical circumstances has held as under:-

> *"In the light of the discussions, findings and conclusions above and in particular, relying on the ratios of the case laws cited supra, we hold as under:-*
>
> *a. The services provided by the appellant in respect of the projects executed by them for the period prior to 1.6.2007 being in the nature of composite works contract cannot be brought within the fold of commercial or industrial construction service or construction of complex service in the light of the Hon'ble Supreme Court judgment in Larsen & Toubro (supra) upto 01.06.2007*
>
> *b. For the period after 01.06.2007, service tax liability under category of "commercial or industrial construction service" under Section 65(105)(zzzh) ibid, "Construction of Complex Service" under Section 65(105)(zzzq) will continue to be attracted only if the activities are in the nature of services" simpliciter.*
>
> *c. For activities of construction of new building or civil structure or new residential complex etc. involving indivisible composite contract, such services will require to be exigible to service tax liabilities under "Works Contract Service" as defined under section 65(105)(zzzza) ibid.*
>
> *d. The show cause notices in all these cases prior to 1.6.2007 and subsequent to that date for the periods in dispute, proposing service tax liability on the impugned services involving composite works contract, under "Commercial or Industrial Construction Service" or "Construction of Complex" Service, cannot therefore sustain. In respect of any contract which is a composite contract, service tax cannot be demanded under CICS /*

CCS for the periods also after 01.06.2007 for the periods in dispute in these appeals. For this very reason, the proceedings in all these appeals cannot sustain."

11. Therefore, by following the ratios of the above cited decisions, we hold that the Appellant are not liable to pay service tax under the category of 'Construction of Residential Complex Services' and accordingly, we set aside the demand along with interest and penalty under Section 78 of the Act.

12. As regards the penalty under Section 77 of the Act imposed upon the Appellant for not getting themselves registered with the department during the relevant period and not filing the ST-3 returns under the 'works contract services', we find that the Appellant are admitting that they are providing works contract services but are not registered with the department and are not filing ST-3 returns under the 'works contract services', accordingly, we hold that the penalty under Section 77 has rightly been imposed by the learned Commissioner on the Appellant and therefore, we uphold the same.

13. In result, the appeal is partially allowed on the above terms.

(Order pronounced in the open court on 18.12.2025)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

RA_Saifi