CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 41076 of 2015

(Arising out of Order-in-Appeal No. 26/2015 (STA-II) dated 16.01.2015 passed by Commissioner of Service Tax (Appeals II), No. 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Rameesh Associates Pvt. Ltd. **...Appellant**
Add: BBC Homes, No. 18,
South Boag Road,
T. Nagar,
Chennai - 600 017.

Versus

Commissioner of GST and Central Excise **...Respondent**
Chennai II Commissionerate,
No. 26/1, Mahatma Gandhi Marg,
Nungambakkam,
Chennai – 600 034.

APPEARANCE:

For the Appellant : Mr. J. Shankarraman, Advocate
For the Respondent : Mr. Harendra Singh Pal, Authorised Representative

CORAM:
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)
HON'BLE MR. AJAYAN T.V., MEMBER (JUDICIAL)

FINAL ORDER No. 40402 /2025

DATE OF HEARING : 22.01.2025
DATE OF DECISION : 28.03.2025

Per Mr. VASA SESHAGIRI RAO

Service Tax Appeal No. ST/41076/2015 has been filed by M/s. Rameesh Associates Pvt. Ltd. (hereinafter referred to as 'Appellant') assailing the impugned Order-in-

Appeal No. 26/2015 dated 16.01.2015 passed by Commissioner (Appeals-II), Chennai upholding the Order-in-Original No. 30/2011 dated 28.03.2011 which confirmed the demands of service tax under proviso to Section 73(1) read with Section 73(2) of the Finance Act, 1994 (ACT) and imposing penalty under Section 78 *ibid*, besides appropriating amounts paid towards demand.

2. The Appellant was engaged in the execution of Plumbing and Sanitary works and were registered with the department under the categories of "Erection, Commissioning and Installation services" and "Works Contract Services" w.e.f. August 2006 and 19.09.2007 respectively and were remitting Service Tax and filing statutory returns. As it appeared to the department that the Appellant was not paying appropriate service tax on the taxable value of services rendered , the department issued a Show Cause Notice dated 19.10.2009 proposing to demand service tax of Rs.6,46,235/- and Rs.2,26,891/- on Erection, Commissioning and Installation services for the period between June 2005- March 2007 and on Works Contract Services during the period June 2007-June 2009 respectively, under proviso to Section 73 *ibid* along with applicable interest and also to impose penalties under Sections 77 and 78 ibid. The adjudicating authority *vide* the

impugned Order-in-Original confirmed the proposals put forth in the SCN and imposed penalty under Section 78, besides appropriating amounts already paid towards demands. Aggrieved, the Appellant filed an appeal before the lower appellate authority who upheld the Order-in-Original but reduced the penalty imposed to 3,00,000/-. Aggrieved, the Appellant has preferred the present appeal before this forum.

3.1 The Ld. Counsel Mr. J. Shankarraman representing the Appellant reiterated the grounds of appeal and submitted that the contract being a comprehensive contract for material as well as service is not taxable for the period prior to June 2007 in terms of the Hon'ble Supreme Court judgement in the case of *CCE Vs. Larsen & Toubro Ltd. [2015 (39) STR 913 (SC)]* wherein it was held that there were no machinery provisions to bring indivisible works contracts under the service tax net prior to June 2007 and hence averred that the demand of tax prior to 01.06.2007 under other services was not sustainable in law.

3.2 With regard to the demand under the category of works contract service for the period from June 2007 to June 2009, it was submitted that the appellant was under a *bonafide* belief that they were not liable to pay service tax as the taxability itself was under dispute during the relevant period as the above ruling of the Hon'ble Supreme Court settled the issue only in 2015 and hence the larger period ought not to have been invoked for demand of tax and imposition of penalty in as much as the appellant had paid the entire dues before the issuance of the show cause notice.

4. The Ld. Authorized Representative Mr. Harendra Singh Pal for the Revenue affirmed the findings in the impugned order and submitted that the Appellant had suppressed material facts with an intent to evade payment of Service Tax and hence the invocation of extended period for demand of duty was sustainable.

5. We have carefully considered the submissions made by both the sides and also evidences available on records.

6. The issues which arise for consideration in this appeal are whether the demand of service tax prior to 01.06.2007 under Erection, Commissioning and Installation services and demand of service tax on Works Contract Services during the period June 2007 to June 2009 is

sustainable and whether extended period of demand is invokable, considering the facts and circumstances?

7. We find that the Appellant was a registered service tax assessee under Erection, Commissioning and Installation services and Works Contract Services” w.e.f. August 2006 and 19.09.2007 and the impugned order confirmed the demands on Erection, Commissioning and Installation services for the period between June 2005-March 2008 and Works Contract Services during the period June 2007-June 2009. The Appellant maintained that even prior to 01.06.2007, he was rendering works contract services as the contract was a composite one involving supply of materials and labour and hence not chargeable to service tax under Erection, Commissioning and Installation services prior to 01.06.2007 in terms of the Hon’ble Supreme Court decision in Larsen and Toubro.

8. In respect of the services provided by the Appellant prior to 01.06.2007, the demand under Erection and Commissioning services was made on the ground that works contracts services were liable to service tax w.e.f. 01.06.2007. In this connection, reliance is placed on the decision of the Hon’ble Supreme Court in *CCE, Kerala vs. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)],* wherein

it was held that the provisions of Section 65(105)(g), 65(105)(zzd), 65(105)(zzh), 65(105)(zzq) and 65(105)(zzzh) were not sufficient for levying service tax on indivisible composite works contract prior to 01-06-2007. The Hon'ble Supreme Court in re Larsen & Toubro & Ors. has ruled as follows: -

> *"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 properly in goods transferred in the execution of a works contract."*

9. In view of this specific decision and the admitted claim of the appellant that they are not providers of 'commercial or

industrial construction service' but of 'works contract service', no tax is liable on construction contracts executed prior to 1st June 2007.

In compliance to the judicial discipline, we hold that the demand upto March 2007 under Erection and Commissioning services is not at all sustainable and liable to be set aside. So, ordered accordingly.

10. For the period from June 2007 to June 2009, the demand of service tax confirmed is Rs.2,33,698/-. We note that the appellant has not contested the liability under works contract for this period. The only argument brought forth by the Ld. Counsel is that they have discharged an amount of around Rs. 1,87,551/- on 03.08.2009 well before the issuance of SCN dated 19.10.2009 under this category after the visit of the departmental officers and they were under *bonafide* belief that Service Tax was not payable as the matter was in dispute before the Hon'ble Supreme Court and hence invocation of extended period for demand of Service Tax was not sustainable. We find that the matter before the Hon'ble Supreme Court pertained mainly to the demand for the period prior to 01.06.2007 and not thereafter. We find that the Appellant who was registered with the department for works contracts services failed to pay Service Tax on Works Contracts involving residential projects consisting of

more than 12 flats. The reasoning attributed by the Appellant for non-payment is baseless when they were discharging service tax on other contracts.

11. However, on a perusal of the Show Cause Notice, we find that there is no allegation of any conscious act on the part of the Appellant that constitutes fraud, collusion, willful misstatement, suppression of facts or contravention of any of the provisions of the Finance Act, 1994 or any rule made thereunder with an intent to evade Service Tax. The petitioner was duly registered and were filing periodical returns. The dispute is only with regard to Service Tax allegedly payable during the period in question. The lower authority must on information at his disposal believes that Service Tax dues have been under-assessed by reason of failure fully and truly to disclose all material facts necessary for assessment. Such a belief may not be based on mere suspicion but must be founded upon information. Where the lower authority finds that there are reasons to believe that Service Tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud; or collusion; or willful mis-statement; or suppression of facts; or contravention of any of the provisions of this chapter or of any rule made thereunder with intent to evade payment of Service Tax by the person

chargeable with the Service Tax, he is bound to disclose the reasons for formation of such belief. However, mere saying that there is contravention of provisions of Chapter V or Rules framed thereunder does not enable the Service Tax Authorities to invoke the extended period of limitation. The contravention necessarily has to be with an intent to evade payment of Service Tax. *Prima facie*, it appears to us on perusal of the impugned notice, that the lower authority proceeded on the basis that there had been contravention, as a result of which, some tax payable had not been paid. The lower authority has failed to address the issues which were required to be addressed, for issuing a notice by invoking the extended period of limitation. As no positive act of suppression has been made out, the demand for the normal period only sustains and the penalty imposed is set aside.

12. In the light of the discussions and findings above, 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 Erection and Commissioning 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, for activities involving indivisible composite works contract, such services are required to be charged to service tax under 'Works Contract Service' as defined under section 65(105)(zzzza).

c. The demand for the normal period only sustains as the extended period could not be invoked for demand of service tax. Consequently, the penalty imposed is set aside.

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

(Order pronounced in open court on 28.03.2025)

Sd/-
(AJAYAN T.V.)
MEMBER (JUDICIAL)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

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