

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

REGIONAL BENCH – COURT No. I

Service Tax Appeal No. 42496 of 2015

(Arising out of Order-in-Appeal No. 184/2015 (STA-I) dated 21.09.2015 passed by Commissioner of Service Tax (Appeals-I), Newry Towers, No. 2054-1, II Avenue, Anna Nagar, Chennai – 600 040)

M/s. Ocean Interiors Limited

MF-1, Industrial Estate, CIPET Hostel Road,
Guindy,
Chennai – 600 032.

...Appellant

Versus

Commissioner of GST and Central Excise

Chennai North Commissionerate,
Newry Towers, No. 2054-I,
2nd Avenue, 12th Main Road,
Anna Nagar,
Chennai – 600 040.

...Respondent

APPEARANCE:

For the Appellant : Mr. V. Swaminathan, Consultant
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. 40825 / 2025

DATE OF HEARING : 27.02.2025
DATE OF DECISION : 14.08.2025

Per Mr. VASA SESHAGIRI RAO

This Service Tax Appeal No. ST/42496/2015 has been filed by M/s. Ocean Interiors Limited, (hereinafter referred to as 'Appellant') holders of Service Tax Registration No. AAAC06540JST001 are providing services relating to Civil, carpentry and interior works in respect of Commercial

or Industrial buildings and Civil Structures, GTA and Works contract.

2. During the Audit of the Accounts of the Appellant, it was noticed that the services provided by them were in the nature of 'Completion and finishing service' and so the exemption provided under Notification No.1/2006-ST, dated 01.03.2006 was not available to them. They had entered into the contract prior to 01.06.2007 and paid service tax on 33% of total amount received. It was also found that for the period after 01.06.2007 they paid service tax at the rate of 2.06% applicable to the taxable service provided under 'Works Contract service'. As the contract was entered prior to 01.06.2007, for the taxable service viz., Commercial or Industrial Construction service or complex service, it was alleged that they were not eligible for classification as a single composite service for the purpose of payment of service tax on or after 01.06.2007 and they were not entitled to avail the Composition scheme under Works Contract service and were liable to pay service tax on the gross value received for the completion and finishing service provided. Further, it was noticed that the Appellant had paid service tax @ 2.06% instead of 4.12% with effect from 01.03.2008 on the taxable income realized. Hence, two show cause notices dated 23.04.2010 and 18.04.2011 respectively

covering the period from Apr'2007 to Oct'2009 were issued and after due process of Law finally which resulted in the confirmation of the demand as proposed along with Interest and penalty *vide* Order-in-Original Nos. 171 & 172/2011 dated 28.12.2011 passed by the Additional Commissioner of Service Tax, Service Tax Commissionerate, Chennai.

3. Being aggrieved, the Appellant went in Appeal before the Commissioner (Appeals), Chennai and the Commissioner Appeals *vide* Order in Appeal OIA No 184/2015(STA-I) dated 21.09.2015 upheld the OIO and rejected the Appeal.

4. Again, aggrieved by this impugned order, the issue was carried in Appeal before this forum *vide* Appeal No. ST/42496/15 and it was prayed therein to set aside the demands affirmed by the Commissioner (Appeals).

5. The Ld. Chartered Accountant Shri Swaminathan, appeared for the Appellants and contended as follows: -

- i. Appellant has entered into works contracts which are covered under section 65(25b) (a) construction of a new building or a civil structure or a part there of and claimed abatement of 67% of total value of the works

contract and paid service tax at 12.24 (service tax 12% and cess 2%) till 31/05/2007.

- ii. When new section 65(105) (zzzza) was inserted for works contract services Appellant started payment of service tax at applicable rate. The Appellant's work involves supply of goods as well as service. The Appellant is a registered dealer, registered under TNVAT Act 2006 and is regularly filing monthly returns.
- iii. The impugned order has classified the services rendered by the Appellant under Section 65(25b)(c) as completion and finishing services without stating the reason why he has come to the above stated conclusion when materials were used in providing such services.

Hon'ble Apex court in the case of Larsen & Toubro had held that contracts which are non vivisectable are to be classified under works contract service only.
- iv. As the contract involves both goods and services the benefit of either Rule 2A of the service tax (determination of value) Rules, 2006 or the benefit of composition scheme must be extended to the Appellant as otherwise, it will lead to levy of service tax on the value of transfer of property in goods and hence the entire demand would be without the authority of law.

v. In denying the abatement, the revenue is trying to levy service tax on value of transfer of property in goods, which is constitutionally impermissible and placed reliance placed on the decision of the Hon'ble Supreme Court in the case of BSNL vs UOI-2006(2) STR 161 (SC).

vi. The Tribunal Chandigarh in the case of M/s.Kumar Builders Vs. Commissioner of Service Tax in Appeal No. 1453 of 2010 date of decision 12.05.2023 has stated as given below: -

i) In Para 2:

CBEC circular, clarifying that a service in existence before 01.06.2007 cannot be changed, is not binding on the Tribunal as held by the Honourable Supreme Court in the case of *Commissioner of C.EX.Bolpur Vs. Ratan Melting & Wire Industries [2008 (231) E.L.T .22 (S.C)]* and as per Hon'ble Bombay high Court in the case of *Century Rayon Vs. Union of India [2002 (142) E.L.T. 319 (Bom.)]*.

ii) In Para 5:

It is clear that it talks of the involvement of material and it does not provide for the bifurcation of the material and service portion, Therefore, it has to be concluded that the contract is a composite one and not vivisectable and qualifies to be 'works contract'.

Finally, it was submitted that the service tax paid by the Appellant is as per law and prayed to set aside the impugned order.

6. *Per Contra*, the Ld. Authorized Representative Mr. Harendra Singh Pal representing the Department 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 legally sustainable. Finally, he submitted that the Commissioner (Appeals) has rightly confirmed the demands and that the impugned order requires no interference.

7. Heard both sides and we have carefully considered the arguments advanced. We have also perused the relevant Grounds of Appeal urged before us, facts on record and the relevant case Laws placed before us.

8. The issues that arise for determination in this appeal are: -

- i. Whether or not the services rendered by the Appellant would fall under "Completion and finishing service" and whether they are eligible to avail exemption under

Notification No. 1/2006-ST dated 01.03.2006 for such services?

- ii. Whether they can avail composition scheme for services and payments received after 01.06.2007 for the contracts entered and partly performed prior to 01.06.2007 under "Works contract service"?
- iii. Whether they can adopt rate of duty applicable for a period prior to 01.03.2008 even though the consideration for such services was received after 01.03.2008? and,
- iv. Whether extended period of limitation can be invoked in this case.

9. We propose to discuss the first two issues being linked with each other. The entire dispute revolves around the classification of the services rendered by the Appellant. It is on record that the works undertaken by the Appellant relate to flooring, partitions, false ceiling, glazing, wall finishing, painting, fixing of appliances *etc.* For better understanding it is important to examine the activities undertaken by them with reference to the definition of "Commercial or Industrial Construction service" provided under Section 65(25b) of the Act which is reproduced below: -

"["commercial or industrial construction"] means -

(a) Construction of a new building or a civil structure or a part thereof; or

(b) Construction of pipeline or conduit; or

(c) Completion and finishing services such as glazing, plastering, painting, floor and wall tiling, wall covering and wall papering, wood and metal joinery and carpentry, fencing and railing, construction of swimming pools, acoustic applications or fittings and other similar services in relation to building or civil structure; or

(d) Repair, alteration, renovation or restoration of, or similar services in relation to, building or civil structure, pipeline or conduit,

(e) Which is -

i. used, or to be used, primarily for; or

ii. occupied, or to be occupied primarily with; or

iii. engaged, or to be engaged, primarily in,

(iv) commerce or industry, or work intended for commerce or industry, but does not include such service provided in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams;"

10.1 We find that the Appellant has entered into contracts which according to the Appellant are covered under section 65(25b) (a) construction of a new building or a civil structure or a part thereof. The Appellant claimed abatement of 67% of total value of the contract and paid service tax at 12.24% (service tax 12% and Cess 2%) on the abated value till 31.05.2007. On the other hand, the Department's contention was that they are classifiable under section 65(25b) (c) of the Finance Act and that they are not

eligible for the abatement of 67% under Notification No. 1/2006 ST and so service Tax has to be discharged on the gross value and in claiming the ineligible abatement, the Appellant have short paid the Tax. The period of Dispute is from April 07 to April 2009.

10.2 Thus, the foremost allegation put forward in the Show Cause Notice is that the appellants have provided only 'completion and finishing works' and so are not eligible for abatement under Notification No. 1/2006-ST dated 01.03.2006. Further, the Appellant has discharged service tax on 33% of the consideration received by wrongly claiming the ineligible exemption under Notification No. 1/2006-ST dated 01.03.2006 upto the month of April 2007 and on subsequent payments received during the month of July 2007, Jan 2008, March 2008 relating to the contracts entered into, the Appellant paid service tax @2.06% as applicable to taxable service provided under 'Works Contract Service'. It was also alleged that the Appellant was not entitled to avail composition scheme of works contract as their services could not be termed as a single composite service for the purpose of payment of service tax after 01.06.2007. However, we find that the Appellant is registered with TNVAT and paying VAT on the materials consumed in execution of the contract. The Appellant have

enclosed details of contracts / work orders and VAT returns for the purchase of materials, evidencing usage of goods in the contract. The Appellant has furnished working of the value of materials consumed in the execution of the contract in Pages 58 to 81 of the paper book which stood at 67.29% of the value of the contract as against the lower abatement of 67% claimed by them in computing the Tax.

10.3 On scrutiny of the appeal records it is indicated that the Appellant is engaged in rendering of services related to carpentry work, false ceiling, flooring, painting, electrical work, civil work, layout of offices, etc. and we find that though interior work forms a major portion of the contracts, there are other works like electrical, plumbing, laying of tiles, construction of manholes, etc. Civil work is also executed in the contract which can be ascertained from the Invoices raised on the contractees. Some work relates to installation of fire alarms, CCTV system, Electrical Distribution board, etc., which according to the Department is clearly covered under Completion and Finishing services w.e.f. 16.06.2005.

10.4 We find that after introduction of Works contract services w.e.f. 01.06.2007, the construction and finishing services are covered under 65(105)(zzzza) of Finance Act, 1994 and are to be taxed accordingly. It is not disputed

anywhere that materials have not been used in the Contract by the Appellant and that that they are registered with TN VAT and paying sales Tax thereon. The Appellant have enclosed Sales Tax returns with the paper book and the names of all the service recipients figure therein.

10.5 The Ld. Counsel pointed out that the ratio of 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 contracts prior to 01.06.2007.

The Hon'ble Supreme Court in the case of *Commissioner of Central Excise & Customs Versus M/s. Larsen & Toubro Ltd. and others* [2015 (8) TMI 749 - Supreme Court] has decided 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 property in goods transferred in the execution of a works contract."

10.6 We also find that in the case of *Voora Shreeram Construction Pvt. Ltd. [2020 (35) G.S.T.L. 574 (Tri. - Chennai)]*, this Tribunal has held as follows: -

"4. After hearing both sides, and on perusal of records, we find merit in the Ld. Advocate is correct in his assertion that the issue in dispute is squarely covered by the case laws cited by him, in particular, that of the Hon'ble Apex Court in M/s. Larsen & Toubro Ltd. (supra,) for the period up to 1-6-2007.

5. For the period after 1-6-2007, the Chennai Bench of the CESTAT in the case of M/s. Real Value Promoters Pvt. Ltd. & Ors. v. Commissioner of G.S.T & Central Excise, Chennai & Ors. vide Final Order Nos. 42436-42438/2018, dated 18-9-2018 have extrapolated the ratio laid down by the Hon'ble Apex Court in M/s. Larsen & Toubro Ltd. (supra) and held that even after 1-6-2007, Service Tax liability for composite contracts can only be demanded under works contract service and not under CICS, etc. For this reason, the impugned order demanding the amount of tax liability under CICS for a composite contract will not survive and will require to be set aside, which we hereby do.

6. The appeal is therefore allowed with consequential benefits, if any, as per law."

10.7 Further we, also note that in para 10 of the OIO and 2.2 of the SCN's, it has been recorded that the identical case of the Appellant which was earlier confirmed by the Commissioner, is pending in appeal before the Hon'ble CESTAT, Chennai, where the Tribunal has stayed the recovery for which the demand period involved is from 16.6.2005 to 30.9.2007 i.e. the period prior to the present Appeal. We further observe that the SCN in this case was issued vide SCN No 75/2008 dated 31.3.2008 which is prior to the date of issue of SCN's in the impugned order. We find that this is an already decided issue for the Appellant partly in their favour, but not cited or relied upon by them.

10.8 In the Appellant's own case, Chennai Tribunal in *M/s. Ocean Interiors Pvt. Ltd. Versus Commissioner of Service Tax, Chennai [2017 (12) TMI 90 - CESTAT CHENNAI]*, has held as follows: -

"5. The department has issued the show cause notice alleging that the construction services would come under 'completion and finishing services' which is only sub-category of Commercial or Industrial Construction Service. That therefore the appellants are not eligible for the abatement, as per the notification. However, it is seen that the issue whether works contract service is subject to levy

of service tax prior to 1.6.2007 has been settled by the judgment of the Apex Court in the case of Larsen & Toubro Ltd. (supra). The appellant having accepted the liability after 1.6.2007 and for re-quantification of demand for this period, the matter is required to be remanded, which we hereby do. We do accept the contention of the appellant that the issue of classification of this service was a matter of dispute and therefore the penalties imposed are unwarranted and requires to be set aside which we hereby do. The impugned order is modified to the extent of setting aside the demand prior to 1.6.2007 along with penalties and remanding the matter to the adjudicating authority for the limited purpose of re-quantification of the liability for the period after 1.6.2007."

10.9 Appreciating the ratio of the above decisions as applicable to the facts of the present appeal, we find no reason to deviate from the above orders and therefore hold that the service provided by the Appellant is works contract before and after 01.06.2007. As works contract was not notified prior to 01.06.2007, the demand prior to 1.6.2007 is ordered to be set aside and since the entire issue being an issue of classification and interpretation of Law, the penalty imposed is also ordered to be set aside. As such, both the demand of service tax prior to 1.6.2007 and penalty imposed in this case is set aside and there is no requirement to look into the aspect of classification under the category of "Completion and finishing service" as alleged in the impugned order for the very reason that goods are used in

the contract and there is transfer of property in the goods in the contract. We therefore hold that the entire supply covered in the impugned order is under Works contract under 65(105) (zzzza) after 1.7.2007 and as the applicable rate of Tax under the composition rules is applicable in this case, the demand has to be re-computed accordingly and which we order to do so.

The first two questions framed by us are thus answered in favour of the Appellant and there is no requirement of looking into classification or abatement in this case as the demand of service tax before 01.07.2007 is not tenable.

11.1 Next comes, the question as to the rate of Tax on the works contract composition scheme applicable as it stood on the date of completion of services. The Ld. Advocate has relied upon Rule 4 of Point of Taxation Rules, 2011 which states that in a case a taxable service has been provided before the change in effective rate of tax, and where the invoice has been issued prior to the change in effective rate of tax but the payment is received after the change in effective rate of tax, the point of taxation shall be the date of issuing of invoice (Rule 4(a)(ii)). The liability to pay service tax is after receipt of the money for the services rendered or at the time of receipt of advance for the services to be rendered in future and as their services were

completed on 21.02.2008 and the applicable rates under the compounding scheme was 2.06%, and as the same was paid by them, their payment of service tax in respect of this contract is in order.

11.2 We find that the above said Rules were not notified during the period in dispute and the same cannot be cited in the present context and we rule out their application in this case.

11.3 On the other hand, the LAA has recorded in his order that *vide* Notification No. 7/2008-ST dated 01.03.2008 the rate of service tax under works contract was increased to 4% from 2%. Later, the Central Board of Excise and Customs, *vide* its Circular No. F.No.345/6/2007-TRU dated 28.4.2008, has clarified that the date on which the services were agreed to be provided has no relevance to determine the applicable tax rate when the service is already taxable at the time of revision of rate, Hence, the rate of 4%, is applicable for the works contract service where payments for the service are received on or after 1.3.2008, whether or not the contracts were entered prior to 1.3.2008. They have relied on the decision of the Hon'ble Tribunal in the case of M/s. Prachar Communications Ltd., Vs. CCE, Mumbai-IV wherein it has been held that "in the case of service tax, the

taxable event is not the time of rendering of services but realization of payment for the services so rendered"

11.4 We have perused the circular and the case law cited and based on the same, we are of the considered view that the Appellant is liable to pay service tax at the enhanced rate of 4% on the taxable income realised under Works contract, for amounts realized on or after 1.3.2008.

11.5 For deciding this issue, we have gone through the work sheet to the SCN and find that the Tax has been rightly computed by the Department in consonance with the CBIC Circular and the impugned order dated 29.03.2013 has rightly dwelt on this issue. Therefore, the question No (iii) framed by us is answered against the Appellant and we hold that there is no ambiguity in the Respondents' decision.

12.1 Finally we come to the last issue on invocation of extended period on the grounds of suppression of facts and limitation of time. The impugned order is the result of two SCN's as shown below: -

Sl. No.	SCN No. and date	Section invoked	Tax involved (Rs)	Period Covered
1	C.No IV/9/330/2010 STC-ADJN dated 23.04.2010	Proviso to Section 73(1), 75, 76,77 and 78 of FA 1994	28,42,113	April 2007 to Dec 2008
2	C.No IV/16/387/2010 SF	Section 73(1), 75	34,440	Oct 2008 to Oct

	0501 dated 18.04.2011	and 76 of FA 1994		2009 (Payment recd. in Oct 2009)
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12.2 We find that the period involved in the First Show Cause-cum-Demand Notice is from Sept 2007 to December 2008 issued under Proviso to Section 73(1) of FA 1994 invoking the extended period, citing suppression of facts. The First SCN covering the extended period came to be issued only in 23.04.2010, and the second SCN dated 18.04.2011 covering the period from October 2008 and September 2009 was issued under the normal period and both of them were the result of Audit of Accounts of the Appellant.

12.3 We note that the respondent has cited suppression of facts to invoke Proviso to Section 73(1) of FA 1994 to demand under larger period of limitation. We find that Proviso to Section 73(1) of Finance Act 1994 reads as hereunder:

"Provided that where any Service Tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of -

- (a) fraud; or*
- (b) collusion; or*
- (c) wilful misstatement; or*
- (d) suppression of facts; or*
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade*

payment of Service Tax, by the person chargeable with the Service Tax or his agent, the provisions of this sub-section shall have effect, as if, for the words "one year", the words "five years" had been substituted."

12.4 We further note that the Appellant has been filing the ST-3 returns in time and also registered under Construction and Industrial services as well as Works contract. There is no suppression in declaration of any services provided by the Appellant. We find that it is a genuine interpretational issue on the classification of services provided, availment of abatement and the relevant date for application of revised Rate of Tax.

12.5 We have taken note of the fact that in an identical case of the Appellant discussed in Para 10.8 *Supra*, this Tribunal has set aside the demand for the period prior to 01.06.2007 and partly remanded the demand for the limited purpose of re-computation of the service tax payable for the period after 01.06.2007 and also set aside the penalties imposed as it is an interpretational issue. In such a situation, we cannot understand why the demands in the present issue covered in the impugned order came to be issued by invoking the extended period citing suppression of facts when the Department was already seized of the matter for the earlier period. We can go a step further and find that

there is a case involving the same Appellant for the Subsequent period, i.e., 2009 to 2013 also, wherein this Tribunal has held that the services provided by them are to be classified under Works contract and decided the Appeal in favour of the Appellant. The Department's Appeal in Supreme Court was turned down on merits. Here we note that, wherever the Department finds that the Demand is beyond the normal period of one year, they mechanically rush to invoke the Proviso to Section 73(1) of the Finance Act, 1994 for shelter, to protect the belated issue of demand.

12.6 We find that there is no allegation that the appellant is not regularly filing its returns or have not reflected the manner of its levy of service tax in its invoices. In such circumstances, when the appellants accounts were audited and the audit queries replied to, there could not be a case of suppression. We finally hold that as there is no suppression in this case and as it is an interpretational issue, the proviso to Section 73(1) of FA 1994 cannot be invoked in this case. Therefore, we have no hesitation in holding that demand covered in the First SCN discussed is hit by limitation of time and this portion of the demand is ordered to be set aside.

12.7 For the second SCN, we find that it covers further payments of Rs.4,15,882/- received in Oct 2009 for an earlier contract which was covered in the First SCN vide Invoices Nos. 605 and 608 both dated 24.12.2008 (Pg. No. 44 of Paper Book). This notice is under the normal period. The impugned order sought to classify the service provided under Completion and finishing services and computed the demand, disallowing the abatement claimed by the Appellant on the gross value of the service provided. We have already held in the case of the First SCN that the classification after 1.6.2007 should be under Section 65(105) (zzzza) of Finance Act, which is squarely applicable for the second SCN also, and in doing so, the rate of Tax under the composition scheme for works contract for the relevant period will be 4.12% of the gross value charged.

12.8 Consequently, the Appellant is directed to pay the Tax on the amount realized in Oct 2009 as shown in the SCN dated 18.04.2011, and discharge the Tax at the rate of 4.12% as applicable for works contract after subtracting an amount of Rs 16,297 being Tax already self-assessed and paid. The Tax liability so arrived, will attract appropriate interest under Section 75 of Finance Act, 1994. There is no need that arises to impose penalty for the demand related to the second Show Cause Notice.

13. To sum it up, the entire demand covered in the First SCN is totally set aside along with penalty. In respect of demand related to Second SCN there can be no penalty as already discussed and held *supra*. However, the Appellant is liable to pay interest on the short-paid Tax covered in the Second SCN under Section 75 of FA 1994.

14. Thus, the Appeal is partly allowed and stands modified to the extent ordered above with consequential benefits, if any, as per the Law.

(Order pronounced in open court on 14.08.2025)

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

MK

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