

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Service Tax Appeal No.183 of 2010

(Arising out of Order-in-Original No.48/Commr/ST/Kol/2009-10 dated 26.02.2010 passed by Commissioner of Service Tax, Kolkata.)

M/s. Ramky Infrastructure Limited

(Jindal Towers, Block-A, 4th Floor, 21/1A/3, Darga Road, Kolkata-700017.)

...Appellant

VERSUS

Commissioner of Service Tax, Kolkata

(180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

.....Respondent

APPEARANCE

Shri B.Venugopal, Advocate for the Appellant (s)
Shri A.Roy, Authorized Representative for the Revenue

**CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)**

FINAL ORDER NO. 75876/2023

DATE OF HEARING : 5 June 2023
DATE OF DECISION : 28 June 2023

Per : K. ANPAZHAKAN :

M/s Ramky Infrastructure Ltd.(The Appellant) was issued show cause notice by the Commissioner of Service Tax, Kolkata, demanding service tax amounting to Rs.7,13,00,523/- being the differential tax for the period 01.04.2007 to 30.09.2008 under the proviso to Section 73(1) of Finance Act, 1994 along with interest and penalties under Section 77, and 78 of the said Act. The Notice was issued on the following grounds:

- (i) The appellant without exercising any option to the Competent Authority as required under Rule 3(3) of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 could not have

discharged Service tax at the rate prescribed under Rule 3(1) of the said Rules;

(ii) The appellant are therefore liable to pay Service Tax as provided under Section 67 of the Finance Act, 1994 read with Rule 2(A) of Service Tax (Determination of Value) Rules, 2006 i.e., pay Service Tax on the gross amount received from the customers for providing of taxable services.

(iii) The appellant without exercising the option for payment of Service under composition scheme have wrongly discharged the tax on Works Contract Services in terms of Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007, instead of discharging tax in terms of Rule 2(A) of Service Tax (Determination of Value) Rules, 2006.

2. During the period 01.04.2007 to 30.09.2008, the appellant has paid Service Tax amounting to Rs.1,96,18,166/- ,in terms of Rule 3(1) of the Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 on the taxable value of Rs.70,26,63,097/- [Gross value Rs.73,55,88,092/- less abatement of Rs.3,26,24,995/-], in terms of Rule 2(A) of Service Tax (Determination of Value) Rules, 2006]. Therefore, the Notice alleged that the Appellant has short paid Service tax amounting to Rs.7,13,00,523/-, which is liable to be recovered from them.

3. The Notice was adjudicated by the Commissioner vide Order-in-Original dated 02.03.2010 confirmed the demands made in the Notice. He also demanded interest and imposed penalties. Aggrieved against the impugned order, the Appellant filed the present appeal.

4. In their submission, the Appellant stated that contract services during the material period and even prior to that prior to introduction of Works Contract Services w.e.f. 01.06.2007, they were not discharging any service tax on the works contract services rendered by them at all. After the introduction of Work Contract Service w.e.f. 01.06.2007, they have written to the jurisdictional Asst. commissioner of Service tax vide letter dated 12.07.2007 informing that they wish to the avail option of composition as provided in Works Contract (Composition Scheme for

Payment of Service tax) Rules, 2007 and also provided the details of the projects in respect of which the option is exercised. However, the Appellant amended their ST-Registration Certificate to include the 'Works Contract Services' only on 10.08.2009.

5. The case of the Department is that the Appellant was not entitled to composition under Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 for payment of Service Tax at the rate of 2% or 4%, as the case may be, without exercising the option under Rule 3(3) of the said Rules and therefore they contended that the Appellant was liable to pay Service Tax in terms of Rule 2(A) of Service Tax (Determination of Value) Rules, 2006 at the rate of 12.36%.

6. The Rule 3 of Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 is extracted below:

"3.(1) Notwithstanding anything contained in section 67 of the Act and rule 2A of the Service (Determination of Value) Rules, 2006, the person liable to pay service tax in relation to works contract service shall have the option to discharge his service tax liability on the works contract service provided or to be provided, instead of paying service tax at the rate specified in section 66 of the Act, by paying an amount equivalent to two per cent. of the gross amount charged for the works contract.

Explanation. - For the purposes of this rule, gross amount charged for the works contract shall not include Value Added Tax (VAT) or sales tax, as the case may be, paid on transfer of property in goods involved in the execution of the said works contract.

(2) The provider of taxable service shall not take CENVAT credit of duties or cess paid on any inputs, used in or in relation to the said works contract, under the provisions of CENVAT Credit Rules, 2004.

(3) The provider of taxable service who opts to pay service tax under these rules shall exercise such option in respect of a works contract prior to payment of service tax in respect of the said works contract and the option so exercised shall be applicable for the entire works

contract and shall not be withdrawn until the completion of the said works contract.”

7. It can be seen from the Rule 3(3) extracted above that it only contemplates exercising the option of composition in respect of works contract prior to payment of service tax in respect of the said works contract. In terms of Rule 6 of the Service Tax Rules, the Service Tax on the taxable services shall be paid on or before 6th of every month following the month the payments are received for such taxable service. Further as per Rule 7 the return shall be filed on half yearly basis on or before 25th day of the month following the particular half year. In the instant case, it is admitted position that the Appellant has intimated the department to exercise his option for composition on vide letter dated 12th July 2007 and also filed ST-3 Returns for the period April 2007 to September 2007 on 18.10.2007 exercising the option of composition for payment of Service Tax under Rule 3(1) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007. It can be seen from the said ST-3 returns, the services were declared as Works Contract Services for the period August 2007 and September 2007 and the payment of Service Tax for the works contract services rendered for the said period were made on 07.09.2007 and 04.10.2007.

8. The Appellant stated that from the above, it is evident that they have exercised the option prior to payment of service tax as declared in their statutory returns and the denial of composition for payment of service tax under Rule 3(1) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 is contrary to the said Rules and the consequently the demand of differential service tax cannot be sustained in law.

9. In support of their argument, the Appellant cited the decision of the Hon'ble High Court of Calcutta in the case of Larsen & Toubro Ltd. v. Asst.Commissioner, Service Tax Commissionerate, Division-III,

Kolkata – 2023 (2) Centax 327 (Cal), wherein , it has been held as under-

"11. Sub-rule (1) of Rule 3 is substantive portion of the rule which provides for an option to be exercised by the person liable to pay service tax. By virtue of the said rule, the person liable to pay service tax has an option to discharge the liability by paying the amount equivalent to 2% of the gross amount charged for the works contract instead of paying service tax at the rate specified in Section 66 of the Act. On a reading of sub rule (1) of Rule 3 shows that the option exercisable by his person liable to pay service tax is exercised by paying service tax at the 2% instead of rates specified in Section 66. Sub rule (3) of Rule 3 states that the provider of the taxable services who opts to pay service tax under the composition scheme shall exercise such option prior to the payment of service tax. If rule 3(1) and (3) and read in conjunction and harmoniously, the intention of the scheme is to give an option to the provider of taxable service to discharge his service tax liability by paying an amount equivalent 50 2%. This being the substantive part of the scheme, sub-rule (3) which is a machinery provision has to give life to the substantive part of the rule namely Rule 3(1) and that would mean that the option shall be exercises by paying the amount equivalent to 2@ of the gross amount charged for the works contract. It is the submission of the learned senior standing counsel that the crucial words in sub rule (3) of Rule 3 is "opts" and "prior to payment of service tax". Thus, the department would contend that the option has to be exercised by the provider of taxable service prior to the payment of service tax. If that be so the rule should provide in what manner the provider of taxable service has to exercise such option. Admittedly no procedure has been laid down under the rule and there is no statutory form for exercise of such option. This has been held so by learned Single Bench, against which the revenue are not on appeal. In the absence of statutory format can the department be heard to say that the option should be exercised in a particular fashion and cannot be by conduct, that is by paying the service tax equivalent to 2% of the gross amount charged for the works contract."

9. The Appellant also refers to and rely upon the decision of the single judge of High Court of Kolkata in the case of Larsen & Toubro v. Asst. Commissioner of Service tax – 2017 (7) GSTL 41 (Cal), wherein para 14 & 15 it was held as follows:-

"14. *This Court, therefore, does not find any lack of competence to vary and/or amend the rate of tax by the competent authority but such rate would be applicable prospectively and shall not affect the pending works contract. The question is still begging an answer when the petitioner exercised an option under the said scheme as both the petitioner and the respondent are at variance on the date of exercise of such option. Sub-rule (3) of Rule 3 of the composite scheme clearly provides that the option should be exercised in respect of works contract prior to the payment of the service tax in respect of the said works contract and such option shall remain applicable for the entire works contract and shall not be permitted to be withdrawn until the completion thereof. It is, therefore, explicit that there is no prescribed mode for exercising such option. Rule 6 of the Service Tax Rules provides that the service tax shall be paid on or before 6th of every month following the month the payments are received for such taxable service. Rule 7 thereof postulates that the return shall be filed on half yearly basis on or before 25th day of the month following the particular area.*

15. *In the present case, the service tax was paid at the rate of 2% and was duly received by the department prior to 1-3-2008. The expression 'opts to pay service tax under these rules' cannot be construed and mean the filing of the return and the payment would sufficiently constitute the exercise of option under composite scheme. Apart from relying upon Rules 6 and 7 of the Service Tax Rules there is no iota of piece of paper produced before this Court that an option was exercised prior to 26-3-2008 by payment of the service tax under composite scheme. The authorities have proceeded that since the option was exercised for the first time on 26-3-2008 the petitioner cannot claim that he would still be liable to pay the tax at the rate of 2% under the said composite scheme and not at the rate of 4%*

subsequently changed on and from 1st March, 2008. If the rate which was applicable as on the date of exercising an option such rate would continue for the entire period of the works contract. This Court finds substance in the submission of the petitioner that the change in a rate of tax subsequent to exercising an option under the said composite scheme cannot operate retrospectively as the rule of the game cannot be changed once it is played."

10. The Appellant also cited the following decisions of the Tribunal wherein under similar facts and circumstances, it was held that the option of composition under Rule 3(1) of Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 cannot be denied.

- (i) ABL Infrastructure Pvt.Ltd. v. CCE, Nasik
[2015 (38) STR 1185 (Tri.-Mumbai)]
- (ii) Areva T & D v. CCE & ST, LTU, Chennai
[2022 (59) GLTL 80 (Tri.-Chennai)]
- (iii) Harsh Construction Pvt.Ltd. v. CCE, Nasik
[2020 (37) GSTL 217 (Tri.-Mumbai)]
- (iv) Bridge& Roof company (I) Ltd. v. CCE, Jaipur
[2018-TIOL-309-CESTAT-DEL]

11. Regarding invocation of extended period, the Appellant submits that there was no suppression of facts with an intent to evade tax in the facts of the case. It is an admitted fact that the appellant have filed letter dated 12.07.2007 with the jurisdictional Asst.Commissioner exercising the option for composition scheme and also the details of the projects on which such option is being exercised were also provided. Further the ST-3 returns for the disputed period i.e. 01.04.2007 to 30.09.2008 was filed within the statutory time limit. There was a delay only in respect of amending the registration certificate to include the 'work contract services', which was done belatedly. Having informed the Department with regard to exercising the option of composition scheme, payment of tax and filing of the ST-3 returns, the non-inclusion of works contract services in the ST Registration Certificate cannot be a ground to allege suppression of facts in order to invoke extended period in this case.

12. In support of this contention, the Appellant cited the decision of Tribunal in the case of CCE, Surat v. Star Crane Service – 2010 (17) STR 576 (Tri.Ahmed), wherein it has been held that –

"It is well settled law that mere failure to apply for registration, by difference cannot be construed as a suppression with intent to evade payment of duty, especially in the field of service tax where the law is new and is changing every day."

13. The Appellant further submits that the impugned order wrongly holds that they have failed to furnish statutory ST-3 return for half year ending September 2007 for providing service in the category of 'Commercial and Industrial Construction Services' in respect of the ongoing projects. They stated that the ST-3 return for half year ending September 2017 was filed within the statutory time limit and the same is already available with the Department. As can be seen from the ST-3 return half yearly ending September 2007, the Appellant have not paid any tax under "Commercial and Industrial Construction Services' prior to 01.06.2007 regarding any of the ongoing projects. This, in no way would be construed as suppression of facts, with an intent to evade tax, in order to invoke extended period. Therefore, the invocation of extended period in the instant case cannot be sustained in law.

14. The Ld. A.R. for the department reiterated the findings in the impugned order.

15. Heard both sides and perused the appeal records.

16. The Appellant stated that the impugned order has denied the abatement of Rs.3,29,24,995/- claimed by the Appellant in respect of VAT and mobilization advances while discharging tax under Rule 3(1) of WCS Rules on the ground that no evidence has been produced before them. The appellant submits that in terms of Rule 3(1) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007, the taxable value excludes the VAT paid on goods/materials in execution of works contract services and therefore there cannot be any dispute with regard to such deduction. VAT

Returns filed by the appellant shows the proof of payment VAT on the projects executed during the disputed period. Even if the service tax is to be paid under Rule 2A of the Service Tax (Determination of Value) Rules, 2006, the VAT paid or sales paid are required to be excluded from the gross amount charged. As far as mobilization advances are concerned, the same have already suffered already tax.

17. We observe that the allegation against the Appellant is that they have discharged Service tax at the rate prescribed under Rule 3(1) of the said Rules without exercising any option to the Competent Authority as required under Rule 3(3) of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 .

18. It is observed that Rule 3(3) only contemplates exercising the option of composition in respect of works contract prior to payment of service tax in respect of the said works contract. In terms of Rule 6 of the Service Tax Rules, the Service Tax on the taxable services shall be paid on or before 6th of every month following the month the payments are received for such taxable service. Further as per Rule 7 the return shall be filed on half yearly basis on or before 25th day of the month following the particular half year. In the instant case, it is admitted position that the Appellant has intimated the department to exercise his option for composition on vide letter dated 12th July 2007 and also filed ST-3 Returns for the period April 2007 to September 2007 on 18.10.2007 exercising the option of composition for payment of Service Tax under Rule 3(1) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007. It can be seen from the said ST-3 returns, the services were declared as Works Contract Services for the period August 2007 and September 2007 and the payment of Service Tax for the works contract services rendered for the said period were made on 07.09.2007 and 04.10.2009. From the above, it is evident that the Appellant has exercised the option prior to payment of service tax as declared in their statutory returns and the denial of composition for payment of service tax under Rule 3(1) of the Works Contract (Composition Scheme for payment of Service Tax) Rules, 2007 is

contrary to the said Rules and the consequently the demand of differential service tax cannot be sustained in law.

19. Hon'ble High Court of Calcutta in the case of Larsen & Toubro Ltd. v. Asst.Commissioner, Service Tax Commissionerate, Division-III, Kolkata – 2023 (2) Centax 327 (Cal), wherein , it has been held as under-

"11. *The petitioner says that once an option is exercised by the tax provider under the said Rules, he cannot resile therefrom for the entire period of works contract and also cannot claim the Cenvat credit of duties and cess paid on any inputs used in or in relation to the works contract under the Cenvat Credit Rules, 2004. According to the learned Advocate for the petitioner, a choice was given to the service provider to take a decision in its commercial wisdom by exercising the option to avoid the cumbersome procedure for payment of the service tax on the component of the materials or sale of goods or transfer of material in goods used in works contract by paying an uniform rate of service tax on the entire works contract and, therefore, any enhancement of the rate of tax subsequent to the exercise of an option, after a person has altered his position is hit by the principle of promissory estoppel. The rate of service tax at the time of promulgation of the said rules was 2% on the works contract which was subsequently enhanced to 4% with effect from 1st March, 2008 and further enhanced at 4.8% with effect from 1st July, 2012.*

12. *The parties are not ad idem on the facts when an option was exercised by the petitioner. According to the petitioner, the mode of option is to be exercised by paying an amount equivalent to 2% of the gross amount charged for the works contract prior to the payment of service tax in respect of the said works contract and not by issuing a letter signifying the exercise of such option to the authority. According to the authorities, since the petitioner intimated about such option by issuing a letter dated 26th March, 2008, the said option shall be deemed to have been exercised on the said date and, therefore, the rate of service tax prevalent on the said date is required to be paid by the petitioner.*

13. *In other words, the respondent says that the option was exercised for the first time by issuing a letter dated 26th March, 2008 and not prior thereto and therefore the rate of tax applicable under the said composite scheme on the date of exercise of option shall apply and not the rate of tax when the return was filed. According to the respondent, once the parties exercised an option under the said composite scheme the embargo becomes immediately active and shall operate throughout the works contract which cannot be construed that the rate of tax should remain static throughout the period of works contract. The challenge to the aforesaid notifications by which the rate of taxes were changed are basically founded on the premise that the amendments cannot operate retrospectively. There is no argument advanced at the bar that the authority lacks competence to vary or amend the rate of tax at any point of time. What is sought to be contended before the Court is that once the composite scheme provides that after the option is exercised by the assessee the composite scheme should remain operative throughout the works contract and cannot be withdrawn until completion thereof. The changes in the rate of tax having brought subsequently by way of an amendment cannot impair the vested right by virtue of its operation from the retrospective date. The composite scheme was framed in exercise of the power under Sections 93 and 94 of the Finance Act, 1994 by the Central Government. The Finance Minister in its budgetary speech proposed the optional composition scheme under the Service Tax to be levied on total value of the works contract. The object for framing such optional scheme was to avoid the maintenance of the voluminous records and dissecting services exigible to tax from the transfer of property of goods involved in execution of the works contract. It is an alternative, simplified and hassle free method of assessment of the tax payable and aim to have a different route but to arrive at the same destination. It is really in the nature of a contract as the department made an offer to the dealers under the works contract to agree or not to agree. Once the dealer exercises an option and agreed to be taxed under the composite scheme, it becomes binding and therefore the department as well as the dealer cannot resile from the said contract. Once the option is exercised it partakes a*

character of a unit of assessment under the said scheme and shall remain in force throughout the period of works contract. The other salient feature of the said composite scheme is that the provider of taxable service is precluded from availing the Cenvat credit of duties or cess paid on any inputs used in or in relation to the works contract. It admits no ambiguity to say that once the provider of the taxable services have opted under the said scheme, the said scheme would remain operative throughout the period of works contract as no choice is left to such provider if the said composite scheme at a later point of time is not beneficial to his interest and should be taxed under the normal procedure. The amendment in the rate of tax is within the legislative competence and cannot be impugned as it is intended to operate retrospectively. The notification by which the rate of taxes under the composite scheme was subsequently amended clearly indicates that it would come into force from the date of its publication in the Official Gazette and in the subsequent notification dated 17th March, 2012, it is expressed that it would come into force on and from 1st April, 2012. Being an alternative method of achieving the same goal it is definitely not controlled by Section 67 of the Act or Rule 2A of the Service Tax (Determination of Value) Rules, 2006.

14. *This Court, therefore, does not find any lack of competence to vary and/or amend the rate of tax by the competent authority but such rate would be applicable prospectively and shall not affect the pending works contract. The question is still begging an answer when the petitioner exercised an option under the said scheme as both the petitioner and the respondent are at variance on the date of exercise of such option. Sub-rule (3) of Rule 3 of the composite scheme clearly provides that the option should be exercised in respect of works contract prior to the payment of the service tax in respect of the said works contract and such option shall remain applicable for the entire works contract and shall not be permitted to be withdrawn until the completion thereof. It is, therefore, explicit that there is no prescribed mode for exercising such option. Rule 6 of the Service Tax Rules provides that the service tax shall be paid on or before 6th of every month following the month the payments are received for such taxable*

service. Rule 7 thereof postulates that the return shall be filed on half yearly basis on or before 25th day of the month following the particular area.

15. *In the present case, the service tax was paid at the rate of 2% and was duly received by the department prior to 1-3-2008. The expression 'opts to pay service tax under these rules' cannot be construed and mean the filing of the return and the payment would sufficiently constitute the exercise of option under composite scheme. Apart from relying upon Rules 6 and 7 of the Service Tax Rules there is no iota of piece of paper produced before this Court that an option was exercised prior to 26-3-2008 by payment of the service tax under composite scheme. The authorities have proceeded that since the option was exercised for the first time on 26-3-2008 the petitioner cannot claim that he would still be liable to pay the tax at the rate of 2% under the said composite scheme and not at the rate of 4% subsequently changed on and from 1st March, 2008. If the rate which was applicable as on the date of exercising an option such rate would continue for the entire period of the works contract. This Court finds substance in the submission of the petitioner that the change in a rate of tax subsequent to exercising an option under the said composite scheme cannot operate retrospectively as the rule of the game cannot be changed once it is played.*

16. *It admits no ambiguity to say that the rights accompanied under the beneficial scheme cannot be abridged or taken away by virtue of later notifications. Once the scheme postulates that the assessee cannot wriggle out therefrom after exercising an option, the change in rates subsequent thereto cannot affect the right under the said beneficial scheme until the entire period of works contract.*

17. *The respondent is banking upon the works contract entered into by and between the petitioner and the Godrej Waterside Properties Pvt. Ltd. wherein the petitioner was conscious that the rate of tax may vary in course of the works contract and incorporated a clause that any changes in existing VAT and service taxes and new taxes being levied during currency of the contract, the same would be paid to the*

petitioner. The said clause, in my opinion cannot help the department for the purpose of construction of the composite scheme. There is a freedom of contract between two individuals unless it is against the public policy. The contract remain binding between the contracting parties which cannot be necessarily borrow an independent and distinct contract by necessary implication.

18. *In this regard the reference can be safely placed upon a judgment of the Supreme Court in case of Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran reported in [2012 \(26\) S.T.R. 289](#) wherein it is held :-*

"26. As far as the submission of shifting of tax liability is concerned, as observed in paragraph 9 of Laghu Udyog Bharati (supra), service tax is an indirect tax, and it is possible that it may be passed on. Therefore, an assessee can certainly enter into a contract to shift its liability of service tax. Though the appellant became the assessee due to amendment of 2000, his position is exactly the same as in respect of Sales Tax, where the seller is the assessee, and is liable to pay Sales Tax to the tax authorities, but it is open to the seller, under his contract with the buyer, to recover the Sales Tax from the buyer, and to pass on the tax burden to him. Therefore, though there is no difficulty in accepting that after the amendment of 2000 the liability to pay the service tax is on the appellant as the assessee, the liability arose out of the services rendered by the respondent to the appellant, and that too prior to this amendment when the liability was on the service provider. The provisions concerning service tax are relevant only as between the appellant as an assessee under the statute and the tax authorities. This statutory provision can be of no relevance to determine the rights and liabilities between the appellant and the respondent as agreed in the contract between two of them. There was nothing in law to prevent the appellant from entering into an agreement with the respondent handling contractor that the burden of any tax arising out of obligations of the

respondent under the contract would be borne by the respondent.

27. If this clause was to be read as meaning that the respondent would be liable only to honour his own tax liabilities, and not the liabilities arising out of the obligations under the contract, there was no need to make such a provision in a bilateral commercial document executed by the parties, since the respondent would be otherwise also liable for the same. In Bank of India (supra) one party viz. the bank was responsible for the formulation of the Voluntary Retirement Scheme, and the employees had only to decide whether to opt for it or not, and the principle of contra proferentem was applied. Unlike the VRS scheme, in the present case we are concerned with a clause in a commercial contract which is a bilateral document mutually agreed upon, and hence this principle can have no application. Therefore, clause 9.3 will have to be read as incorporated only with a view to provide for contractor's acceptance of the tax liability arising out of his obligations under the contract."

19. *On the above discussions this Court does not find any error both on facts or law that at the time of exercising an option the rate of tax under the said beneficial scheme was 4% and therefore the petitioner cannot continue to deposit the rates under the said beneficial scheme at the rate of 2%. It admits no ambiguity to say that the rate prevalent at the time of exercising an option would continue until the expiration of the works contract and any variation and/or changes in the rate of tax by subsequent notification the department would not be within its authority to charge more as such changes would not be applicable to the existing works contract.*

20. *With these observations, the writ petition is thus disposed of."*

20. the Appellant cited the decision of the Hon'ble High Court of Calcutta in the case of Larsen & Toubro Ltd. v. Asst.Commissioner,

Service Tax Commissionerate, Division-III, Kolkata – 2023 (2) Centax 327 (Cal), wherein , it has been held as under-

"We observe that the decision cited above supports the case of the Appellant. In view of the above discussion, we hold that the Appellant has rightly exercised the option to the Competent Authority as required under Rule 3(3) of Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 and hence they are eligible to discharge Service tax at the rate prescribed under Rule 3(1) of the said Rules."

21. In view of the above discussion, we hold that the demand of service tax confirmed in the impugned order is not sustainable. The Appellant is not liable for penalty under sections 77 and 78 of the Finance Act, 1994. Accordingly, we set aside the impugned order.

22. In view of the above discussion, we allow the appeal filed by the appellant.

(Order pronounced in the open court on 28 June 2023.)

Sd/
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)