

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

REGIONAL BENCH – COURT NO. 1

Service Tax Appeal No. 75751 of 2014

(Arising out of Order-in-Appeal No.38/ST/KOL/2014 dated 31.08.2014 passed by the Commissioner of Central Excise (Appeals) Appeal-I Kolkata, Bamboo Villa, 169, AJC Bose Road, Kolkata-700014)

M/s. Vogue

79, Lenin Sarani, Room No. 408A,
Kolkata-700013

: Appellant

VERSUS

**Commissioner of Service Tax Commissionerate, : Respondent
Kolkata**

Central Excise Bhawan, 180,
Santipally, Rajdanga Main Road,
3rd Floor, Kolkata-700107

APPEARANCE:

Shri Agani Besh Sengupta, Advocate
Shri Indranil Banerjee, Advocate for the Appellant

Shri K. Chaudhuri, Authorized Representative for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77120/2024

DATE OF HEARING / DECISION: 23.09.2024

Order: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned order wherein demand of Service Tax has been confirmed against them under the category of 'completion and finishing service' and 'commercial or industrial construction service'.

2. The facts of the case are that the appellant was engaged in the activity of providing completion and finishing services and commercial or industrial construction services.

2.1. The appellant recovered service charges from their clients but did not pay Service Tax under the category of 'commercial or industrial construction service' during the period from 16.06.2005 to 31.03.2007. Therefore, proceedings were initiated against the appellant, to demand Service Tax from the appellant under the categories of 'completion and finishing service' and 'commercial or industrial construction service'.

3. The matter was adjudicated and the demand of Service Tax was confirmed against the appellant by way of the impugned order.

3.1. Aggrieved from the said order, the appellant is before us.

4. The Ld. Counsel appearing on behalf of the appellant submits that it is an admitted fact that appellant have provided the impugned services along with materials, and the same has been accepted by the Id. adjudicating authority in the impugned order. He contended that as the said activities had been undertaken by the appellant along with materials, in these circumstances, the appropriate classification of the service would be 'works contract service' which came under the Service Tax Net w.e.f. 01.06.2007; therefore, no Service Tax is payable by the appellant as held by the *Hon'ble Apex Court in the case of Commissioner of C.Ex. & Cus., Kerala v. Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)]*. It is therefore prayed that the impugned order is to be set aside.

5. We have also heard the Ld. Authorised Representative of the Revenue, who supported the impugned order.

6. Heard the parties and considered their submissions.

7. We find that it is an admitted fact that during the material period, the appellant was providing completion and finishing services and commercial or industrial construction services, along with materials, as has been admitted by the Id. adjudicating authority in the impugned order. In these circumstances, the above services merit classification under 'works contract service', as held by the Hon'ble Apex Court in the case of Larsen & Toubro Ltd. (supra), wherein the Hon'ble Apex Court observed as under: -

6. In this case, it is not in dispute that the appellant is providing the services along with materials. Therefore, the appropriate classification of the above services is under "Works Contract Service" and no demand of service tax is raised against the appellant under "Works Contract Service" in view of the decision of the Hon'ble Apex Court in the case of Larsen & Tourbro Limited reported in 2015 (39) STR 913 (S.C.), wherein the Hon'ble Apex Court has observed as under:

"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.

41. We are afraid that there are several errors in this paragraph. The High Court first correctly holds that in the case of composite works contracts, the service elements should be bifurcated, ascertained and then taxed. The finding that this has, in fact, been done by the Finance Act, 1994 Act is wholly incorrect as it ignores the second Gannon Dunkerley decision of this Court. Further, the finding that Section 67 of the Finance Act, which speaks of "gross amount charged", only speaks of the "gross amount charged" for service provided and not the gross amount of the works contract as a whole from which various deductions have to be made to arrive at the service element in the said contract. We find therefore that this judgment is wholly incorrect in its conclusion that the Finance Act, 1994 contains both the charge and machinery for levy and assessment of service tax on indivisible works contracts."

7.1. We hold that, as the appellant has provided the services along with materials, the merit classification of the said services is 'works contract service' which came into the Service Tax Net w.e.f. 01.06.2007. As the entire period under dispute is prior to 01.06.2007, therefore, we hold that no demand is sustainable against the appellant. Accordingly, whole of the demand confirmed against the appellant, along with interest and penalty, is set aside.

8. The appeal filed by the appellant is allowed, by setting aside the impugned order.

(Operative part of the order was pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)