IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Service Tax Appeal No. 396 of 2012

(Arising out of Order-in-Appeal No.129/BOL/2012 dated 16.05.2012 passed by Commissioner of Central Excise (Appeals), Kolkata)

M/s Mondal Construction , **: Appellant**
B-4/22, Milan Pally, Kururiadanga, Vill & Post-Amrai, Dist-Burdwan, Durgapur-713203 (W.B.)

VERSUS

Commissioner of Customs Excise, Kolkata **: Respondent**
180 Santipally, Rajdanga Main Road, Kolkata-700107.

APPEARANCE:

Shri Amit Kumar, Advocate for the Appellant

Shri S.Dutta, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. 75470/ 2026

DATE OF HEARING :09.03.2026

DATE OF DECISION: 30.03.2026

Order : [Per Shri Ashok Jindal]

The appellant is in appeal against the impugned order.

2. The facts of the case are that during the course of investigation conducted by the Department it was found that as per the Form 26 As the appellant has received large amount of money from their client M/s. Durgapur Steel Plant (DSP) for providing services against work order for the period 2004-05 to 2008-09 for which appellant has not paid Service Tax. Therefore, appellant was asked to file copies of balance sheet and sample copy of invoices for the impugned period and for scrutiny of the document provided by the appellant, department found that the appellant provided taxable services

amounting to Rs. 3,78,590/- for the period 2004-05, Rs. 4,41,511/- for the FY 2005-06,Rs. 15,99,917/- for the FY 2006-07, Rs. 15,38,088/- for the FY 2007-08 and Rs. 61,22,733/- for the FY 2008-09. It was also found that after providing taxable services since the year 2004, the appellant neither declared the full facts in ST -3 returns nor paid full amount of service tax. Thus a notice was issued to the appellant proposing demand of service tax alongwith interest and penalties was also proposed.

3. The matter was adjudicated and the Adjudicating Authority held that appellant is liable to pay Service Tax amounting to Rs. 12,26,358/- alongwith interest and penalties was also imposed.

4. The said order was challenged before the Ld. Commissioner (Appeal) on the ground that the value of exempted service are not deducted for the purpose of valuation of the taxable value of service and abatement as per Notification No. 12/2003 ST dated 20.06.2003 was not given despite, the appellant has produced necessary documents. It was also submitted that tree plantation and maintenance of tree was considered as taxable services.

5. The Ld. Commissioner (Appeal) gave a benefit to the appellant in terms of CBEC circular No. 80/10/2004-ST dated 17/09/2004 holding that the repair and renovation and allied works of road in DSP township are exempted services. Further he held that the appellant was engaged in construction services i.e. renovation of allied works of roads in DSP Township and internal plumbing work and other allied works and asked to pay Service Tax from the appellant.

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

7. The Ld.Counsel for the appellant submits that the demand of Service Tax has been paid under the category of Construction Services, Commercial and Industrial Construction Services and erection and commissioning services. Infact, the appellant has supplied the services alongwith material. In that circumstances, the activity undertaken by the appellant is appropriately classifiable under 'works contract services'. As no demand has been raised against the appellant under works contract service therefore, demand of Service Tax is not sustainable against the appellant. In view of this the impugned order be set aside.

8. Heard the parties. Perused the record.

9. We find that the appellant has produced the invoices of raw material used by the appellant for providing the above service which means that the appellant has provided the services alongwith material. Therefore, same merits classification under works contract service which was taxable from 1st June, 2007 as held by Hon'ble Apex Court in the case of Larsen & Toubro Ltd., 2015 (39) STR 913 (SC).

10. *In this case, it is not in dispute that the appellant is providing the services along with materials. Therefore, the merits classification of the above services under "Works Contract Service" and no demand is raised against the appellant under "Works Contract Service". Therefore, following the decision of the Hon'ble Apex Court in the case of*

Larsen & Tourbro Limited (supra) 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.*
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> …………………………………………………………….

> ***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."*

11. In view of this, we hold that as the merit classification of the services rendered by the appellant is works contract service and no demand has been proposed to be raised against the appellant under works contract service. In that circumstances we hold that demand of service tax is not sustainable against the appellant.

12. Therefore, we set aside the impugned order

and allow the appeal with consequential relief, if any.

(Pronounced in the open court on _30.03.2026)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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