CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

SERVICE TAX APPEAL NO: 85054 OF 2017

[Arising out of Order-in-Original No: 23-24/ST-VII/CD/2016 dated 24th October 2016 passed by the Commissioner, Service Tax—II, Mumbai.]

Nikhil Comforts
1003, RS Sampada CHS, Arunodaya Nagar
Mulund (East), Mumbai- 400 081 … ***Appellant***

versus

Commissioner of CGST & Central Excise
Navi Mumbai
16th Floor, Satra Plaza, Sector 19D, Palm Beach Road
Vashi, Navi Mumbai - 400705 ***…Respondent***

WITH

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APPEARANCE:

Shri Kevin Gogri, Advocate for the appellant

Shri Manish Mohan, Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86779-86780/2025

DATE OF HEARING: 28/10/2025
DATE OF DECISION: 28/10/2025

PER: C J MATHEW

This appeal of M/s Nikhil Comforts lies against confirmation of demand of ₹ 1,14,46,002, and ordered for recovery under section 73 of Finance Act, 1994 along with appropriate interest under section 75 of Finance Act, 1994, besides imposition of penalty of ₹ 1,14,46,002 under section 78 of Finance Act, 1994 consequent upon denial of benefit of exemption under notification[1] for the period from March 2006 to September 2006 and recovery of ₹ 1,98,00,904 under section 73 of Finance Act, 1994, along with appropriate interest under section 75 of Finance Act, 1994, besides penalty of ₹ 98,00,904 imposed under section 78 of Finance Act, 1994 for the period 1st April 2007 to 31st October 2007 while disposing off two show cause notices.

2. It was alleged that, insofar as the first notice is concerned, the appellant had not discharged leviable tax owing to ineligible claim for abatement as provider of 'erection, commissioning and installation

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[1] [no. 19/2003-Service Tax dated 21st August 2003]

service'. In the second show cause notice, pertaining to provision of 'erection, commissioning and installation service' as well as 'works contract service' and 'maintenance and repair service', the demand was confirmed to the extent that the appellant had failed to provide evidence of service having been rendered to 'special economic zone (SEZ)' as well as documents evidencing fulfillment of condition in notification[2] and for non-production of documents of having fulfilled conditions in notification[3].

3. According to Learned Counsel for the appellant, the issue of leviability of tax on composite contract prior to 1st June 2007 had been settled by the Hon'ble Supreme Court in *Commissioner of Central Excise & Customs, Kerala v. Larsen & Toubro Ltd [2015 (39) STR 913 (SC)]* and that the taxability for the period thereafter was to be guided by the legal provision which were required to be strictly followed.

4. It is also apparent that a portion of the demand have been confirmed for failure to provide appropriate documentation which Learned Counsel contends had, indeed, been furnished.

5. We have heard Learned Authorized Representative.

6. In view of the limited submission on the taxability of service *simpliciter* and 'works contract service' in decision of the Hon'ble

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[2] [no. 1/2006-Service Tax dated 1st March 2006]
[3] [no. 32-2007-Service Tax dated 22nd May 2007]

Supreme Court in *re Larsen & Toubro Ltd* and the non-consideration of documents pertaining to fulfilment of conditions for exemption from tax, as well as for abatement, it would be appropriate to set aside the impugned order and remand the matter back to the adjudicating authority for a fresh decision in the light of factual circumstances and settled law.

7. The appeal is allowed by way of remand.

(operative part of the order pronounced in the open court on 28th October 2025)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*